TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 253.

ADA F. McDONNELL, PLAINTIFF IN ERROR,

vs.

LLEWELLYN JORDAN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA.

FILED APRIL 6, 1899.

(17,355.)

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1 THE UNITED STATES OF AMERICA, }
Northern District of Alabama, Northern Division. }

Pleas had at a regular term of the circuit court of the United States for the northern division of the northern district of Alabama, begun and held at the United States court-rooms, in the city of Huntsville, in said division and district, on the second Monday in October, it being the tenth day thereof, in the year of our Lord one thousand eight hundred and ninety-eight—present and presiding, Honorable John Bruce, judge of the district courts of the United States for the middle and northern districts of Alabama, and sitting as circuit judge; Daniel N. Cooper, United States marshal, and N. W. Trimble, clerk—among other proceedings were had the following:

Be it remembered that heretofore, to wit, on the 12th day of August, 1897, came Llewellyn Jordan, contestee, by attorneys, and filed in this court his petition and exhibits thereto, praying for the removal from the probate court of Madison county, Alabama, into the circuit court of the United States for the northern division of the northern district of Alabama of a certain cause therein pending, in which Ada F. McDonnell is contestant and Llewellyn Jordan is contestee, said petition being in words and figures as follows, to wit:

2 *Petition for Removal of Cause from State Court.*

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

In the Matter of the Contest of the Will of MATTIE LEE FENNELL, Dec'd.

ADA F. McDONNELL, Contestant, } No. 1652. Law. Petition to Remove Cause so Entitled from State Court.
vs.
LLEWELLYN JORDAN, Contestee. }

To the honorable judges of the circuit court of the United States for the northern division of the northern district of Alabama:

Your petitioner, Llewellyn Jordan, respectfully shows that he is the defendant in the above-entitled suit, which has not been tried, but is now pending for trial in the probate court of the State of Alabama for the county of Madison, and that he desires to remove the same into the circuit court of the United States for the northern division of the northern district of Alabama.

Your petitioner further states that in the above-mentioned suit there is a controversy between a citizen of the State in which said suit is brought and a citizen of another State, to wit, a controversy between your said petitioner, who avers that he was at the commencement of the said suit and still is a citizen of the State of Mississippi, and the said Ada F. McDonnell, who, your petitioner avers, was at the commencement of the said suit and still is a citizen of the State of Alabama, in which State said suit was brought, and that

both the said Ada F. McDonnell and your petitioner are actually interested in said controversy.

Your petitioner further states that he has filed herewith an affidavit that it may be made to appear to the said circuit court that from prejudice and local influence your petitioner will not be able to obtain justice in the said State court or in any other State court to which your petitioner may, under the laws of the State, have a right on account of such prejudice or local influence to remove said cause.

The suit involves title to real estate and personal property and is as follows:

3 The will of Mattie Lee Fennell was filed in said probate court for probate on the 9th day of February, 1897. Said Mattie Lee Fennell was a resident of Madison county, Alabama, and died leaving real estate in said county of the value of more than ten thousand dollars and personal property of the value of more than two thousand dollars. Her next of kin and only heir-at-law is Ada F. McDonnell, a resident citizen of Madison county, State of Alabama. Her sole devisee and legatee is petitioner, Llewellyn Jordan, a citizen of the State of Mississippi. The said will is duly probated by the affidavit of S. S. Pleasants, the only surviving witness to the will. Its due execution was also proven in said probate court by the testimony of witnesses without conflict or contradiction. Said will was filed in said probate court for probate in common form, and is so probated, but no decree has been rendered thereon by said probate court. On the 11th day of February, 1897, as allowed by the statutes of Alabama, Ada F. McDonnell filed in said probate court her contest of the said will in writing, alleging in substance want of testimentary capacity on the part of the said Mattie Lee Fennell, that she was unduly influenced to make said will, and that said will was obtained by the fraud of this petitioner and others acting by his procurement. This contest so instituted by said Ada F. McDonnell is a suit *inter partes* to annul and make void the said will, a decision of which is *res adjudicata* of the validity of said will and conclusive as to the title of the said real and personal estate. If the averments of the said contest so filed by the said Ada F. McDonnell are true, and if they are found to be true by the judgment of the court, the title to the said property will be in the said contestant. If, on the contrary, they are found to be untrue, the title to the said property will be and remain in the contestee—this petitioner. The said will on the failure of said contest is conclusive as a muniment of title. A copy of the pleadings in said cause in said probate court is herewith filed and made part of this petition.

Your petitioner therefore prays that the said affidavit may be accepted as good and sufficient, and that the said suit may be removed into the said circuit court of the United States for

4 the northern division of the northern district of Alabama, aforesaid, and to the end, also, that the said removal may be

perfected, that such orders be made in the premises as the nature of the case may require.

D. D. SHELBY,
R. W. WALKER,
Attorneys for Contestee, Llewellyn Jordan.

UNITED STATES OF AMERICA, }
Northern Division of the Northern District of Alabama. }

I, Llewellyn Jordan, being duly sworn, do say of my own personal knowledge that I am the petitioner in the above-entitled cause; that I have read the foregoing petition and know the contents thereof, and that the statements and allegations therein contained are true.

LLEWELLYN JORDAN.

UNITED STATES OF AMERICA, }
District of Columbia. }

Sworn to and subscribed before me this 29th day of July, 1897, in the District of Columbia aforesaid, where said Jordan personally appeared before me.

[OFFICIAL SEAL.] J. ALTHEUS JOHNSON,
U. S. Commissioner for the District of Columbia.

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

In the Matter of the Contest of the Will of MATTIE LEE FENNELL, Deceased.

ADA F. McDONNELL, Contestant, *vs.* LLEWELLYN JORDAN, Contestee. } No. 1652. Law. Cause Pending in State Court. Affidavit to Remove.

UNITED STATES OF AMERICA, }
Northern Division of the Northern District — Alabama. }

I, Llewellyn Jordan, being duly sworn, do say that I am the defendant in the above-entitled cause; that from prejudice and local influence I will not be able to obtain justice in the probate court of the State of Alabama and county of Madison or in any other State court to which the said defendant, your petitioner, may, under the laws of said State, have the right, on account of such prejudice or local influence, to remove said cause.

5 The said Ada F. McDonnell is the wife of Henry McDonnell. She and her husband have lived in Madison county, Alabama, all their lives. Her husband is a practising physician in said county. That he has a large acquaintance in said county; that they and the said Henry McDonnell have exerted and are exerting their influence against affiant, and that they have created such prejudice; that persons holding office in said county have made active efforts to create and have created prejudice against affiant's

said cause, and that from such prejudice and local influence affiant will not be able to obtain justice in said State court or in any other State court to which said cause could be removed; and affiant makes this affidavit of his own knowledge.

LLEWELLYN JORDAN.

UNITED STATES OF AMERICA, *District of Columbia.*

Sworn to and subscribed before me this 29th day of July, 1897, in the District of Columbia, where said Jordan personally appeared before me.

[OFFICIAL SEAL.] J. ALTHEUS JOHNSON,
U. S. Commissioner for the District of Columbia.

Bond on Removal.

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

ADA F. McDONNELL, Contestant,
vs.
LLEWELLYN JORDAN, Contestee. } No. 1652. Law.

Know all men by these presents that I, Llewellyn Jordan, as principal, and W. L. Russell, as surety, are held and firmly bound unto Ada F. McDonnell and all other persons whom it may concern in the penal sum of two hundred dollars ($200.00); for the payment of which, well and truly to be made, we bind ourselves, our heirs, representatives, and assigns, jointly and severally, firmly by these presents.

Yet upon these conditions: The said Llewellyn Jordan having petitioned this court for the removal of a certain cause pending in the probate court of Madison county, Alabama, wherein petitioner is defendant and contestee and Ada F. McDonnell is contestant, to the circuit court of the United States for the northern district of Alabama:

6 Now, if the said Llewellyn Jordan, your petitioner, shall enter in the circuit court of the United States on the first day of its next session a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by said circuit court of the United States if said court shall hold that said suit was wrongfully or improperly removed, then this obligation is to be void; otherwise in full force and virtue.

Witness our hands and seals this 12th day of August, 1897.

LLEWELLYN JORDAN. [SEAL.]
W. L. RUSSELL. [SEAL.]

Approved August 12th, 1897.
N. W. TRIMBLE, *Clerk.*

Order Granting Petition.

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

ADA F. McDONNELL, Contestant,
vs.
LLEWELLYN JORDAN, Contestee. } No. 1652. Law.

In the matter of the contest of the will of Mattie Lee Fennell.

It appearing to the court from the petition and affidavits herein filed that in said controversy between Llewellyn Jordan, a citizen of the State of Mississippi, and Ada F. McDonnell, a citizen of the State of Alabama, wherein said suit is brought, and it is made to appear to the court that from prejudice and local influence Llewellyn Jordan will not be able to obtain justice in the probate court of Madison county, Alabama, in which said suit is pending, or in any other State court to which the said defendant and petitioner may under the law of the State have the right on account of such prejudice or local influence to remove said cause—

It is therefore ordered that said cause be, and the same is hereby, removed from said probate court of Madison county, Alabama, into this court, and the said cause will be placed on the docket by the clerk of this court.

August 12th, 1897.

JOHN BRUCE, *Judge.*

Endorsed: Filed in clerk's office Aug. 12th, 1897. N. W. Trimble, clerk.

7 *Affidavit of D. D. Shelby.*

In the Circuit Court of the United States for the Northern District of Alabama, Northern Division.

ADA F. McDONNELL, Contestant,
vs.
LLEWELLYN JORDAN, Contestee. } No. 1652. Law.

Before me, Ed. E. Greenleaf, U. S. commissioner, personally appeared D. D. Shelby, one of defendant's and contestee's attorneys, who, being duly sworn, deposes and says: That he has not on this day, August 12th, 1897, filed with the petition the exhibits therein referred to, being a copy of the pleadings in the probate court in said cause before its removal to this court, because he was unable to obtain copies of such papers after making diligent effort to obtain them. On the 4th day of August, 1897, affiant filed in said probate court an intervening petition and answer for Llewellyn Jordan, and then asked Mr. Pace, the clerk of the court, for copies of the pleadings, including said answer. Affiant furnished said clerk with a list of the said pleadings and learned that the clerk

made out copies that day. Affiant is informed that Hon. S. M. Stewart, judge of said probate court, directed the said clerk not to deliver to affiant the said transcripts. Affiant had personal interviews with said clerk and judge and asked for said copies of said papers, but they have not yet been furnished.

Affiant and associate counsel wrote said judge three letters requesting copies of said papers. Copies of the letters so written to said judge are hereby filed, marked "A," "B," "C," and made parts of this affidavit. The original letter, of date August 12th, 1897, was returned to affiant with the note from Judge Stewart endorsed thereon, but affiant up to this time has been unable to obtain the desired transcripts. The said clerk, Mr. Pace, is usually very prompt in the performance of his duties, and on August 12th, 1897, informed affiant that he had already, on August 4th, 1897, made copies of the proceedings which affiant asked for, and that he was ready to deliver them when the probate judge consented. Affiant offered to pay the fees for the said copies asked for. Affiant will again endeavor to obtain copies, and will file them herein as soon as furnished, and on the failure of said probate judge to furnish said copies will duly apply for a writ of certiorari from this
8 court to obtain them.

The said probate judge, at a later hour, 5 o'clock p. m. of this date, offered to give affiant part of said record, but declined to furnish a copy of the intervening petition of Llewellyn Jordan, filed August 4th, 1897. The offer to affiant of part of the record was made after the foregoing affidavit was prepared and ready to be filed in said cause.

D. D. SHELBY.

Sworn to before me this 12th day of August, 1897.

ED. E. GREENLEAF,

[OFFICIAL SEAL.] *U. S. Commissioner.*

EXHIBIT "A" TO FOREGOING AFFIDAVIT.

HUNTSVILLE, ALA., *August 11th*, 1897.

Hon. S. M. Stewart, probate judge, Madison county, Ala.

DEAR SIR: We requested your clerk, Mr. Pace, several days ago to furnish us with a transcript of the record in the case of the contest of Mattie Lee Fennell, deceased. We wish copies of the following papers:

1. The petition filed by Walter E. Jordan.
2. Contest filed by Ada F. McDonnell.
3. The amended contest filed by Ada F. McDonnell.
4. The amendment to the petition filed by Walter E. Jordan.
5. The intervening petition filed by Llewellyn Jordan August 4th, 1897, and endorsed by the clerk of the probate *clerk*, "Filed August 4th, 1897. S. M. Stewart, probate judge," filed on that day with the affidavit of S. S. Pleasants, attached as an exhibit to the intervening petition. We request that you furnish us from the file

in the court copies of these papers. While we have retained copies, we do not desire to use our office copies. The fees for the copies will be paid when the copies are handed to us.

Yours very truly,

D. D. SHELBY,
R. W. WALKER,
Attorneys for Llewellyn Jordan.

9 EXHIBIT "B" TO FOREGOING AFFIDAVIT.

HUNTSVILLE, ALABAMA, *Aug. 12th*, 1897.

Hon. S. M. Stewart, probate judge, Madison county, Ala.

DEAR SIR: Since August 4th, the day we filed the intervening petition and answer for Llewellyn Jordan, we have endeavored to get from your office copies of the pleadings and orders in the Fennell-will contest case. We again ask to be furnished with copies. In our letter of yesterday, to which no response has been made, we enumerated the several papers that we know to be filed in the case. If there are others, we wish copies of all of them.

If the clerical force in your office is so engaged that you cannot make copies, if you will furnish us the original papers filed in the case we will have copies made.

Very truly yours,

D. D. SHELBY.
R. W. WALKER.

Endorsed.

D. D. Shelby.

DEAR CAPT.: This is the first request I have seen. Mr. Pace, who prepared the papers several days since, left for Nashville day before yesterday and returned this morning. I have no desire to hold up any copy requested of paper in this court. Now that Mr. Pace has returned, my force in office, I think, is sufficient to keep up with all reasonable demands. You will please forward him list of any papers you wish copied and oblige,

Yours respectfully,

S. M. STEWART,
Probate Judge.

8, 12, '96—2.30.

EXHIBIT "C" TO FOREGOING AFFIDAVIT.

HUNTSVILLE, ALABAMA, *August 12th*, 1897.

10 Hon. S. M. Stewart, probate judge, Madison county, Ala.

DEAR SIR: Your note to Mr. Shelby just received. The copies of the papers we asked for on August the 4th and which we enumerated in our letter to you of yesterday are as follows:

1. The petition, filed by Walter E. Jordan, to probate the will of Mattie Lee Fennell.
2. The contest of said will, filed by Ada F. McDonnell.
3. An amendment to the contest, filed by Ada F. McDonnell.
4. An amendment to the petition, filed by Walter E. Jordan.

5. An intervening petition and answer, with exhibit attached, filed by Llewellyn Jordan.

6. A renunciation of the right to have letters testimentary issued to him, filed by Walter E. Jordan.

Please be so kind as to inform us whether or not these papers will be furnished to us. We desire them this afternoon, and we believe Mr. Pace has them already copied, with the exception of the last-mentioned paper, which contains only a few lines.

Yours truly,

D. D. SHELBY.
R. W. WALKER.

Endorsed: Filed in clerk's office August 12, 1897. N. W. Trimble, clerk.

Affidavit of R. W. Walker.

STATE OF ALABAMA, }
Madison County. }

R. W. Walker, being duly sworn, says that the annexed two sheets contain a true and correct copy of papers filed in the office of the probate judge of said Madison county, and that the words endorsed on the wrapper, "Filed Aug. 4th, 1897. S. M. Stewart, J. P.," *is* in the handwriting of Frank T. Pace, chief clerk of said probate court.

Affiant further states that on the 7th day of August, 1897, he requested and demanded of the Hon. S. M. Stewart, the probate judge of said Madison county, a certified copy of the annexed papers, offering to pay the lawful charge for such copy, and that said probate judge failed and refused to furnish such copy.

R. W. WALKER.

11 Subscribed and sworn to before me this 17th day of August, 1897.

ED. E. GREENLEAF,
U. S. Commissioner.

[OFFICIAL SEAL.]

Intervention of Llewellyn Jordan.

STATE OF ALABAMA, }
Madison County. }

In the Probate Court of said County.

In the matter of the contest of the probate of the will of Mattie Lee Fennell comes Llewellyn Jordan, named in the amendment to the petition in this cause filed by Walter E. Jordan, and intervenes in said proceeding and files this his answer to the contest of Ada F. McDonnell.

Respondent, for answer to the contest filed by the said Ada F. McDonnell on the 11th day of February, 1897, says that the 1st, 2nd, 3rd, 4th, and 5th grounds thereof are untrue and are denied; and for answer to the additional grounds of contest filed March 22nd,

1897, says that the 6th ground thereof *are* wholly untrue and is denied. (The 7th ground has been stricken out and is therefore not answered.)

Respondent avers that the said Mattie Lee Fennell was of sound mind and disposing memory, and that the averments in the said contest to the contrary are untrue and are denied, and that proof thereof is demanded and required.

The allegations of the said contestant that the said will was obtained and procured by undue influence and fraud are denied and proof thereof required.

Respondent refers to the said original will of Mattie Lee Fennell, on file in said court and in said case, as a part hereof, and files herewith the affidavit of S. S. Pleasants, the surviving witness to said will.

Respondent alleges that the said Mattie Lee Fennell was at the time of her death an inhabitant of Madison county, Alabama, over twenty-one years of age, and that she died on the 25th day of February, 1897, owning real and personal property in said county, having first made said last will on the 12th day of December, 1895. Ada F. McDonnell is her next of kin and only heir had she died intestate. Mattie Lee Fennell was unmarried. Said Ada F. McDonnell is a resident citizen of Madison county, Alabama.

LLEWELLYN JORDAN,
Devisee and Contestee.

12 THE STATE OF ALABAMA, }
Madison County. }

Probate Court, —— Term, 189–, August 4th, 1897.

In the Matter of the Probate of the Last Will and Testament of MATTIE LEE FENNELL, Deceased.

Before me, S. M. Stewart, judge of probate in and for said county, personally appeared in open court S. S. Pleasants, who lives in said county and is known to me, who, having been by me first duly sworn and examined, did and do depose and say on oath that he is a subscribing witness to the instrument of writing now shown to him, and which purports to be the last will and testament of Mattie Lee Fennell, deceased, late an inhabitant of this county, and that said Mattie Lee Fennell, since deceased, signed and executed said instrument on the day the same bears date and declared the same to be her last will and testament, and that affiant set his signature thereto on the day the same bears date as a subscribing witness to the same in the presence of said Mattie Lee Fennell and the other witness, Louis J. Searcy, and that such other witness subscribed his name as a witness in his presence and in the presence of said Mattie Lee Fennell and in the presence of affiant; that said Mattie Lee Fennell was of sound mind and disposing memory, and in the opinion of deponent fully capable of making her will at the time the same was so made as aforesaid. Affiant further states that said Mattie Lee Fennell was on the day of the date of said will of the

full age of twenty-one years and upwards and at her death owned property in said county. Louis J. Searcy is dead.

S. S. PLEASANTS.

Sworn to and subscribed before me this 4th day of August, 1897.

S. M. STEWART,
Judge of Probate.

Endorsed: Answer of Llewellyn Jordan to the contest filed by Ada F. McDonnell. Filed August 4th, 1897. S. M. Stewart, J. P.
Endorsed: Filed in clerk's office August 17th, 1897. N. W. Trimble, clerk.

13 *Motion to Strike from Files.*

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

In re Contest of Will, MATTIE LEE FENNELL, Deceased.

This day comes Ada F. McDonnell, by her attorneys, William Richardson and Lawrence Cooper, not waiving any right hereafter to make and enter a motion to remand, and whose appearance is expressly limited to the purpose of this motion, who is the contestant in a certain proceeding now pending in the probate court of Madison county, Alabama, wherein Walter E. Jordan is the proponent and plaintiff and Ada F. McDonnell is the contestant and defendant, to probate a certain instrument in writing, dated December 17th, 1895, and signed M. L. Fennell, and attested by S. S. Pleasants and Louis J. Searcy, as the last true will and testament of the said M. L. Fennell, and moves the court to dismiss and strike from the files the petition of Llewellyn Jordan, which bears this caption: "Ada F. McDonnell, contestant, *vs.* Llewellyn Jordan, contestee; law; petition to remove cause so entitled from State court," and for grounds of motion says:

1st. That no such suit or proceeding has been or is now pending in the probate court of Madison county, Alabama.

2nd. Llewellyn Jordan never has been nor is he now a defendant in any suit or proceeding touching or relating to the contest of the will of Mattie Lee Fennell in the probate court of Madison county, Alabama.

3rd. Llewellyn Jordan, the petitioner, is not authorized under the statutes of the United States, 1887–'88, regulating the removal of causes from State court to the Federal court, to petition this court for the removal of the suit or proceeding had in the probate court of Madison county, Alabama, in the matter of the contest of the will of Mattie Lee Fennell, deceased, to the Federal court; and in support of this motion the said Ada F. McDonnell herewith files, and makes the same a part of this motion, a full and complete transcript of the proceedings had in the probate court of Madison

county, Alabama, touching the contest of the will of Mattie Lee Fennell, deceased.

WILLIAM RICHARDSON,
LAWRENCE COOPER,
Attorneys for Ada F. McDonnell.

Filed in clerk's office Sept. 3rd, 1897.
N. W. TRIMBLE, *Clerk.*

14 *Transcript of Proceedings in Probate Court of Madison County, Alabama.*

THE STATE OF ALABAMA, }
Madison County. }

To the Honorable S. M. Stewart, judge of probate of said county:

The petition of the undersigned, Walter E. Jordan, respectfully represents:

That Mattie Lee Fennell, who was at the time of her death an inhabitant of said county, died on or about the 5th day of February, 1897, leaving real and personal property in said county and State, having first made on the 17th day of December, 1895, her last will and testament, she then being over 21 years old, duly signed and published by her, said Mattie Lee Fennell, and attested by Louis J. Searcy and S. S. Pleasants. A copy of said will is made Exhibit "A" to this petition.

The original will is hereby surrendered to this court. Said testatrix was unmarried. She has no descendants; her mother and father both died before her death. Her sister, Ada F. McDonnell, a resident of said county and State, is her next of kin, and would have been her only heir had she died intestate.

Llewellyn Jordan, a resident and citizen of the State of Mississippi, temporarily residing at Washington, D. C., is named as devisee in said will. Said attesting witnesses reside at Huntsville, Alabama. Petitioner is named in said will as one of the executors thereof. Said Llewellyn Jordan is named as executor. Also petitioner prays that a day may be set for the hearing of this petition, and that due notice thereof be given, as required by law, to the next of kin of said deceased, and that all necessary decrees, orders, and other proceedings may be had and made in the premises as may be necessary to effect the due probate of said will according to law.

W. E. JORDAN.

D. D. SHELBY,
Attorney for Petitioner.

Sworn to and subscribed by the said Walter E. Jordan before me this February 9th, 1897.

S. M. STEWART,
Judge of Probate.

15 Endorsed: Mattie Lee Fennell. Petition to probate will. Filed Feb'y 9th, 1897. S. M. Stewart, J. P. M. B. 24, p. 488, R. B.

Copy of Will.

I, Mattie Lee Fennell, being of sound mind, and knowing the uncertainty of this life do make this my last will and testament.

I. I give devise and bequeath all the property that I may own at my death, whether real, personal or mixed, to my mother, Mrs. M. E. Fennell, to have and to hold during her natural life, and at her death I give devise and bequeath the same to my cousin Llewellyn Jordan, of Washington, D. C., to have and to hold forever in fee-simple.

II. If my mother should die before my death, then I give devise and bequeath all of the property which I may own at my death whether real, personal or mixed to my said cousin, Llewellyn Jordan, in fee-simple.

III. I hereby nominate and appoint said Llewellyn Jordan, and Walter E. Jordan executors of this my will, and direct that they be appointed to act as such without bond.

Signed, sealed, and published as my last will this the 17th day of December, 1895.

(Signed) M. L. FENNEL. [SEAL.]

Signed, sealed, and published by the said Mattie Lee Fennell as her last will and testament in our presence, and we have signed the same as witnesses thereto in her presence, at her request, and in the presence of each other.

(Signed) LOUIS J. SEARCY.
S. S. PLEASANTS.

Endorsed: Copy of will, Miss Fennell. Filed in probate court Feb'y 8, 1897. S. M. Stewart, J. P. Exhibit "A" to petition of Walter E. Jordan.

16 *Notice of Day for Hearing Probate of Will.*

THE STATE OF ALABAMA, }
Madison County. }

To any sheriff of the State of Alabama.

To Mrs. Ada F. McDonnell:

You will please take notice that on the 11th day of February, 1897, a certain paper in writing, purporting to be the last will and testament of Mattie Lee Fennell, was filed in my office for probate by W. E. Jordan, and that the 24th day of February, 1897, was appointed a day for the hearing thereof; at which time you can appear and contest the same if you see proper.

Given under my hand this 11th day of February, 1897.

S. M. STEWART,
Judge of Probate.

Endorsed: State of Alabama, Madison county probate court. Matter of application of W. E. Jordan to probate will of Mattie Lee

Fennell, deceased. Notice to Ada F. McDonnell of day set for hearing. Issued 11th day of February, 1897. Executed by handing a copy of within writ to Mrs. Ada F. McDonnell Feb'y 11th, 1897. O. Fulgham, sh'ff.

Contest of Will.

In the Probate Court.

To the Hon. S. M. Stewart, judge of probate:

Comes Ada F. McDonnell, the wife of Dr. Henry McDonnell, a resident citizen of the county of Madison and State of Alabama, and represents and shows to your honor that she is the sister of Mattie Lee Fennell, deceased, who departed this life on the 5th of February, 1897; that the said Mattie Lee Fennell at the time of her death had no brother or sister except your petitioner.

She represents that she is the sole heir and distributee of the said Mattie Lee Fennell. She further represents that she has been informed and so believes that a certain instrument in writing, dated the 17th day of December, 1895, signed M. L. Fennell and witnessed by Louis J. Searcy and S. S. Pleasants, purporting to be the last true will and testament of the said Mattie Lee Fennell, has been filed in this honorable court, praying an order of this court to admit said paper-writing to probate as the last true will and testament of the said Mattie Lee Fennell.

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She now here enters this her objection and contest of said writing, purporting to be the will of the said Mattie Lee Fennell, and for grounds of contest alleges and says:

1. Because the instrument purporting to be the will of the said Mattie Lee Fennell was not signed by the subscribing witnesses in the presence of the testatrix.

2. Because the said Mattie Lee Fennell did not sign her name to said paper-writing in the presence of the subscribing witness-.

3. Because the alleged will was not signed by the subscribing witnesses at the request of the testatrix, and the subscribing witnesses did not sign the same in the presence of each other and in the presence of the said Mattie Lee Fennell.

4. Because the said Mattie Lee Fennell, at the time the alleged will was signed and executed, was of unsound mind and memory and not mentally capable of making a will.

5. Because the execution of the will was procured by fraud and undue influence exercised by one Llewellyn Jordan, who is named as the sole devisee in said will, and others operating in his behalf and by his procurement.

The defendant, Ada F. McDonnell, demands a trial by jury.

WILLIAM RICHARDSON,
Attorney for Ada F. McDonnell.

Endorsed: Mattie Lee Fennell. Contest of will by Ada F. McDonnell. Jury demanded by defendant. Filed in probate court this 11th day of Feb'y, 1897. S. M. Stewart, J. P. M. B. 24, p. 490, R. B.

Amended Grounds for Contest.

In the Probate Court.

In the Matter of the Contest of the Will of MATTIE LEE FENNELL, Deceased.

Comes Ada F. McDonnell, contestant, and, by leave of the court first had and obtained, moves the court to allow her to amend the grounds of her contest, in this:

18 6. That said paper propounded is not the last will and testament of the said Mattie Lee Fennell. Said instrument is not her will.

WILLIAM RICHARDSON,
Attorney for Ada F. McDonnell.

Endorsed: Contest will, Mattie L. Fennell. Amended grounds of contest. Filed March 22nd, 1897.

Order Setting for Hearing.

Probate Court, Feb'y 24th, 1897.

Estate of MATTIE LEE FENNELL, Dec'd. Matter Probate Will Continued.

This day having been regularly appointed for hearing the application of W. E. Jordan, proponent, and also to consider in connection therewith the grounds of contest presented by next of kin, Mrs. Ada F. McDonnell—Wm. Richardson, Esq., for defendant, and D. D. Shelby and R. W. Walker, for the plaintiff—all being now in court, and the fact of attorney for Mrs. McDonnell having filed on the 23rd February in this court interrogatories to Columbus Few, Mary Ripley, and Henrietta Sims, all of whom reside in the city of Hendersonville, North Carolina, more than one hundred miles from the city of Huntsville, Alabama, all of whom are claimed to be material witnesses for the contestant in the matter of the contest of the probating of the will of the said Mattie Lee Fennell, deceased, and for reasons satisfactory to the court, the hearing of this matter is hereby continued to the 30th day of March, 1897, and the jury ordered to be drawn on the 20th day of March, 1897, from the box, as in the circuit court.

Proceedings at Drawing of Jury.

In Probate Court, March 20th, 1897.

Estate of MATTIE LEE FENNELL, Dec'd. Matter of Probate of Will Contest.

This being the day heretofore appointed by order of this court entered February 24th, to draw in open court from the jury-box the names of fifteen persons from which to select jury to be empanelled for the purpose of determining whether or not to probate

the will of Mattie Lee Fennell, propounded by W. E. Jordan and contested by Ada F. McDonnell—W. E. Jordon and Attor-
19 neys D. D. Shelby and R. W. Walker, for proponent, and Hon. Tancred Betts represents Wm. Richardson, for contestant—the court proceeded to draw from jury-box the following names:

J. B. Joplin, Gurley.
W. F. Lawler, Gurley.
J. S. Wilson, Whitesburgh.
Geo. Johnson (farmer), Monrovia.
L. H. Carter, Hazel Green.
Branch Fletcher (farmer), Madison.
A. J. Hannah (farmer), Gurley.
J. A. Beasley, Monrovia.
J. C. Nyman, Hurricane.
John Lawler, Maysville.
W. L. Fanning, New Market.
R. A. Givens, Gurley.
J. W. Atchley (farmer), Gurley.
S. H. Floyd, Madison.
B. T. Reagan, Maysville.

The above venire for special jury in matter of contest of will, Mattie Lee Fennell, dec'd, given to sheriff, with instructions to summon above named to appear before this court on 30th day of March, 1897, for purpose hereinbefore stated.

Hearing on Contest of Will.

In Probate Court, March 30th, 1897.

Estate of MATTIE LEE FENNELL, Dec'd. Contest of Will.

This being the day regularly appointed by order of this court, entered on February 24th, 1897, to hear matter of contest of will of Mattie Lee Fennell, deceased, and by order of same date the court proceeded, on 20th day of February, to draw from box 15 names as jurors, from which jury was to be empanelled to try issues in matter of contest of said will.

The challenges and other legal cause the jury being incomplete, court proceeded to draw from box names of eight persons from which jury list will be completed. The following names were drawn in open court:

L. H. Sanderson, farmer, Cluttsville.
W. T. Campbell, Gurley.
James Meeks, Maysville.
John T. Timmons, Whitesburgh.
Samuel Keel, farmer, Poplar Ridge.
B. L. Coyle, Deposit.
J. C. Broyles, Maysville.
C. B. Colburn, farmer, Vienna.

The above venire for special term given to sheriff with orders to serve at once and have persons in court tomorrow, April 1st, at 2 p. m., to which hour court adjourned.

20 In Probate Court, April 1st, 1897, 2 p. m.

The following persons were legally questioned, sworn, and empanelled a jury to try the issues made up in the matter of contest of will of Mattie Lee Fennell, deceased; W. E. Jordan, proponent,

and Ada F. McDonnell, contestant; D. D. Shelby and R. W. Walker representing proponent and William Richardson for contestant:

Jury.

J. B. Joplin,	J. S. Wilson,	John B. Lawler,	George Johnson,
J. C. Nyman,	W. L. Fenning,	L. H. Carter,	R. A. Givens,
J. W. Atchley,	B. T. Reagan,	Wm. Campbell,	Samuel Keel.

Report of Jury.

In Probate Court, April 15th, 1897.

Estate of MATTIE LEE FENNELL, Dec'd. Matter of Contest of Will.

This day comes into court the jury heretofore empanelled on the 30th day of March, before whom the issues — made up and tried in the matter of the contest of the will of Mattie Lee Fennell, deceased (propounded by W. E. Jordan, proponent, and Ada F. McDonnell, contestant), and in open court state that they cannot agree upon a verdict, and that it is useless to detain them longer, the jury being eight in favor of proponent and four for contestant.

The jury is therefore now, by order of this court, discharged and cause continued for rehearing Monday, 6th day of June, 1897.

Continuance until July 6th, 1897.

In Probate Court, June 6th, 1897.

Estate of MATTIE LEE FENNELL, Deceased. Matter of Contest of Will.

This being the day heretofore by order of this court set for rehearing case in matter of contest of will of said deceased, now, for good reasons satisfactory to the court, said cause is continued to 6th day of July, 1897.

Amendment to Petition of Proponent.

In the Probate Court of Madison County, Alabama.

In the Matter of the Application to Probate the Will of
21 MATTIE LEE FENNELL, Deceased, by Walter E. Jordan, Proponent; Ada F. McDonnell, Contestant.

By leave of the court the proponent amends the petition by alleging the following:

"That the said Llewellyn Jordan is the sole legatee and devisee under said will, and is the person really interested in defending the validity of said will and in answering and defending the contest filed in said court to annul and make invalid said will."

The prayer of said petition is amended by adding the following:

"Petitioner prays that citation and all proper notice be given the said Llewellyn Jordan of this case and contest, and that he be made a party defendant to this petition.

W. E. JORDAN, *Proponent.*

Sworn to and subscribed before me this 28th day of May, 1897.

S. M. STEWART,
Judge of Probate.

Endorsed: Petition of probate of will of Mattie Lee Fennell, deceased. Proponent's amendment to petition to probate will. Filed May 28th, 1897. S. M. Stewart, judge of probate.

Order Denying Petition to Amend.

In Probate Court, August 3rd, 1897.

Matter of Petition to Amend. MATTIE LEE FENNELL, Deceased.

In the matter of the petition of W. E. Jordan to make Llewellyn Jordan party defendant to this case, and that citation and all proper notice be given said Llewellyn Jordan as such, heretofore filed with the papers in this case, May 28th, 1897, was set for hearing this August 3rd, 1897.

This day argued by Shelby and Walker for proponent and Richardson and Cooper for contestant. Motion overruled and amendment not allowed; and for reason good and satisfactory to this court the further hearing of this contest continued to Sept. 3rd, 1897.

22 *Answer of Llewellyn Jordan.*

STATE OF ALABAMA, }
Madison County. }

In Probate Court of said County.

In the matter of the contest of the probate of the will of Mattie Lee Fennell comes Llewellyn Jordan, named in the amendment to the petition in this cause filed by Walter E. Jordan, and intervenes in said proceeding and files this his answer to the contest of Ada F. McDonnell.

Respondent for answer to the contest filed by said Ada F. McDonnell on the 11th day of February, 1897, says that the 1st, 2nd, 3rd, 4th, and 5th grounds are untrue and are denied, and for answer to the additional grounds filed March 2nd, 1897, says that the 6th grounds thereof are wholly untrue and are denied. (The seventh ground has been stricken out; is therefore not answered.)

Respondent avers that the said Mattie Lee Fennell was of sound mind and disposing memory, and that the averments in the said contest to the contrary are untrue and are denied, and that proof thereof is demanded and required.

The allegations of the said contestant that said will was obtained and procured by undue influence and fraud are denied and proof thereof required.

Respondent refers to said original will of Mattie Lee Fennell on file in said court and in said cause as a part hereof, and files herewith the affidavit of S. S. Pleasants, the surviving witness to said will.

Respondent alleges that the said Mattie Lee Fennell was at the time of her death an inhabitant of Madison county, over twenty-one years of age, and that she died on the 5th day of February, 1897, owning real and personal property in said county, having first made said last will on the 18th day of December, 1895. Ada F. McDonnell is her next of kin and only heir had she died intestate. Mattie Lee Fennell was unmarried. Said Ada F. McDonnell is a resident and citizen of Madison county.

April 4th, 1897.

LLEWELLYN JORDAN,
Devisee and Contestee.

23 *Proof of Will.*

THE STATE OF ALABAMA, }
Madison County. }

Probate Court, August 3rd, 1897.

In the Matter of the Probate of the Will of MATTIE LEE FENNELL, Deceased.

Before me, S. M. Stewart, judge of probate in and for said county, personally appeared in open court S. S. Pleasants, who lives in said county and who is known to me, who, having been by me first duly sworn and examined, did and do depose and say on oath that he is a subscribing witness to the instrument of writing now shown to him and which purports to be the last will and testament of Mattie Lee Fennell, deceased, late an inhabitant of this county, and that said Mattie Lee Fennell, since deceased, signed and executed said instrument on the date the same bears date, and declared the same to be her last will and testament, and that affiant set his signature thereto on the day the same bears date as a subscribing witness to the same in the presence of said Mattie Lee Fennell and the other subscribing witness, Louis J. Searcy, and that such other witness subscribed his name as a witness in his presence and in the presence of the said Mattie Fee Fennell and in the presence of affiant. The said Mattie Lee Fennell was of sound mind and disposing memory, and in the opinion of the deponent fully capable of making her will at the time the same was so made, as aforesaid. Affiant further states that said Mattie Lee Fennell was on the day of the date of said will of the full age of twenty-one years *of age* and upwards, and at her death owned property in said county. Louis J. Searcy is dead.

S. S. PLEASANTS.

Sworn to and subscribed to before me this 4th day of August, 1897.

S. M. STEWART,
Judge of Probate.

Endorsed: Proof of will. Filed August 4th, 1897. S. M. Stewart, judge of probate.

24 *Order to Strike Intervention of Llewellyn Jordan from Files.*

Estate of MATTIE LEE FENNELL, Deceased.

July Term, 1897.

AUGUST 4TH, 1897.

In this cause a paper, purporting to be an intervention on behalf of Llewellyn Jordan, having been endorsed "filed" by the clerk of this court, without the knowledge of the court, and said paper being so endorsed filed without an order authorizing said Llewellyn Jordan to intervene herein, and the motion made by Walter E. Jordan, the proponent, praying that the said Llewellyn Jordan be made a party defendant having heretofore, on the 3rd day of August, 1897, been overruled and disallowed, it is therefore ordered that said paper purporting to be an intervention of said Llewellyn Jordan be stricken from the files in this cause.

Petition for the Appointment of Special Administrator.

STATE OF ALABAMA, }
Madison County. }

To Hon. S. M. Stewart, judge of probate:

Your petitioner, Ada F. McDonnell, respectfully represents to your honor that her sister, Mattie Lee Fennell, departed this life on or about the 5th day of February, 1897; that at the time of her death she was a resident citizen of the county of Madison, State of Alabama; that she died seized of personal property and real estate situate and being in the county of Madison; that she left a will, the validity of which is being contested in this court; that the collection of rents on decedant's plantation and o her matters pertaining to the interest of her estate require the appointment of a special administrator until letters testamentary or administration have been duly issued. Petitioner represents and shows to your honor that she is the nearest of kin to the said Mattie Lee Fennell, deceased. She therefore prays that your honor will issue to her special letters of administration on the estate of the said Mattie Lee Fennell, deceased, as the law in such cases directs; and she will ever pray.

ADA F. McDONNELL.

I, Henry McDonnell, consent that letters of special administration on the estate of Mattie Lee Fennell, deceased, be granted and issued to my wife, Ada F. McDonnell, the above petitioner.

HENRY McDONNELL.

25 Endorsed: The judge of the court having heard that a petition had been filed in the United States circuit court, northern district, northern division of Alabama, for the removal of this cause, no order will be made upon the above petition.

Endorsed: Matter of estate of Mattie Lee Fennell, dec'd. Petition for letters of special administration. Filed August 17th, 1897. S. M. Stewart, probate judge.

Petition of W. E. Jordan Renouncing Right as Executor.

STATE OF ALABAMA, }
Madison County. }

In the Probate Court.

In the Matter of the Estate of MATTIE LEE FENNELL.

To the judge of said court:

The undersigned, Walter E. Jordan, named in the will of Mattie Lee Fennell as one of her executors, renounces his right to have letters testamentary issued to him. He desires that the said will shall be probated, but that letters testamentary should issue alone to the co-executor named in said will, Llewellyn Jordan.

August 5th, 1897.

W. E. JORDAN.

Certificate to Transcript.

STATE OF ALABAMA, }
Morgan County. }

I, S. M. Stewart, judge of the court of probate in and for the said county and State, do hereby certify that the foregoing 19 pages contain a full, true, and perfect transcript of all the orders, notices, and proceedings had in the probate court of Madison county, Alabama, concerning or relating to the matter of the petition and contest of the will of Mattie Lee Fennell, deceased.

[SEAL.] Given under my hand and seal of office this 3rd day of September, 1897.

S. M. STEWART,
Judge of Probate.

Endorsed: Estate Mattie Lee Fennell, deceased. Filed Aug. 11th, 1897. S. M. Stewart, J. P. C.

Endorsed: Transcript of proceedings in probate court of Madison county, Ala. Filed in clerk's office by contestant's attorney Sept. 3rd, 1897. N. W. Trimble, clerk.

26 *Notice of Motion to Remand.*

In the United States Circuit Court, Northern Division, Northern District of Alabama.

In the Matter of the Contest of the Will of MATTIE LEE FENNELL, Deceased.

To D. D. Shelby and R. W. Walker, attorney-for Llewellyn Jordan :

This is to give you notice, not waiving any rights that our client has under and by virtue of the motion made and filed in this honorable court on the 3rd day of September, 1897, to strike from the files and dismiss the petition of Llewellyn Jordan for the removal from the probate court of Madison county, Alabama, to this honorable court a certain cause pending in said probate court touching and relating to the petition to probate and the contest of the will of Mattie Lee Fennell, deceased; that the undersigned, attorneys of Ada F. McDonnell, at the proper time after the meeting of the court, make a motion in this honorable court to remand said cause to the probate court of Madison county, Alabama.

WILLIAM RICHARDSON,
LAWRENCE COOPER,
Attorneys for Ada F. McDonnell.

Endorsed : Notice of motion to remand. Received copy Sept. 9th, 1897. D. D. Shelby and R. W. Walker, sol'rs for contestee. Filed in clerk's office Sept. 9th, 1897. N. W. Trimble, clerk U. S. circuit court.

Petition for Writ of Certiorari.

Circuit Court of the United States, Northern District of Alabama, Northern Division.

ADA F. McDONNELL, Contestant,
vs.
LLEWELLYN JORDAN, Contestee.

To the honorable judges of said court :

The petition of Llewellyn Jordan respectfully shows to the court : On the 4th day of August, 1897, petitioner, by his attorney, filed in the probate court of Madison county, Alabama, his intervening petition and answer to the contest of the will of Mattie Lee Fennell, filed therein by Ada F. McDonnell. After said petition was duly endorsed filed by the said clerk of said court, petitioner's attor-
27 ney, D. D. Shelby, Esq., requested the clerk to make out a transcript of the pleadings in said cause, including the said intervening petition. Petitioner is informed and believes that the said clerk prepared such transcript, and that the judge of the said probate court directed him not to deliver it to petitioner's attorney. Petitioner's attorney made several written requests for a transcript, including a copy of said intervening petition, and the said probate judge refused to furnish it. These facts were stated in an affidavit

filed in this cause by D. D. Shelby on the 12th day of August, 1897, which affidavit is referred to as a part of this petition. On the 17th day of August, 1897, after this cause had been removed to this court, petitioner's attorney, R. W. Walker, applied to said probate judge to furnish him a copy of said intervening petition and answer, and the said probate judge refused to furnish him a copy thereof.

Petitioner refers to the affidavit of R. W. Walker, filed in this court August the 17th, 1897, and makes the same a part of this petition. On the 4th day of September, 1897, said probate judge handed to petitioner's attorneys, without further request on their part, papers purporting to be transcript from the probate court of said cause, which contained a copy of said intervening petition and answer, but to which said probate judge had added an order striking the same from the files. The said order bore date August 4th, 1897. Petitioner is informed and believes and alleges that this order so dated August 4th, 1897, was not on the probate court minutes, and had not been made on August the 12th, 1897, when this cause was removed to this court. Petitioner is informed that the said probate judge had furnished contestant's attorneys with a transcript of said record so prepared and containing said order on or before Sept. 3rd, 1897, and afterwards tendered said copies to petitioner's attorneys on the 4th of September, 1897, a copy of the same having then been filed herein by contestant's attorneys as an exhibit to a motion made by them. Petitioner's attorneys returned said transcript to the probate judge with a written request to be furnished with a copy of the record as it stood when the order of removal was made.

A copy of this last request is made an exhibit to this petition. It is dated September the 6th, 1897. The said probate judge
28 has failed and refused to furnish petitioner with a transcript of said record as it was when this cause was removed to this court. Petitioner is informed that he is entitled to have filed in this court a copy of the record as it existed when the order of removal was made.

The premises considered, petitioner prays that this court make and enter an order requiring and commanding the Hon. S. M. Stewart, judge of the probate court of Madison county, Alabama, to forthwith certify to this court a full and complete transcript of the pleadings and decrees in the matter of the contest of the will of Mattie Lee Fennell, as the same existed in the said court on the 12th day of August, 1897, when the said contest was removed to this court, including in the said transcript a copy of the intervening petition and answer of Llewellyn Jordan to the contest of the will of said decedent filed by Ada F. McDonnell, and that no order or decree be included in said transcript that was made or entered on the minutes of the court after the 13th day of August, 1897, and petitioner prays for all other and further relief that is proper as the facts stated.

LLEWELLYN JORDAN, *Petitioner.*

D. D. SHELBY,
R. W. WALKER, *Attorneys.*

UNITED STATES OF AMERICA, }
District of Columbia. }

I, Llewellyn Jordan, being duly sworn, depose and say that I have read the foregoing petition, and that the statements thereof made on my own knowledge are true, and that those made on information and belief I believe to be true.

LLEWELLYN JORDAN, *Petitioner.*

Sworn to and subscribed before me this 2nd day of October, 1897.

[SEAL.] A. S. TAYLOR,
U. S. Commissioner.

Letter Requesting Copy of Record as it Existed August 12, 1897.

HUNTSVILLE, ALA., *Sept. 6th*, 1897.

Hon. S. M. Stewart, probate judge, Madison county, Ala.

DEAR SIR: Enclosed we return to you the papers purporting to be a copy of the record in the Fennell will case, which you
29 handed us on Saturday, September the 4th, 1897, at 2.30 o'clock p. m. It contains a copy of the intervening petition of Llewellyn Jordan, which we endeavored so often to obtain from you during the month of August, and which we were forced to furnish to the United States court by a sworn copy, but you have added to the record an order striking the petition from the file, dating it August the 4th, 1897. It is known to us and admitted by you that no such order was on the minutes on August the 12th, 1897, when this cause was removed to the United States courts. This order has been entered by you after the removal of the case, and is therefore no part of the record. The entry of date August 15th, 1897, purporting to show how the jury stood on the trial of the issue between Walter E. Jordan and Ada F. McDonnell, has been entered without authority, as the jury was not polled. We respectfully ask if that entry has not been written in the record since the removal of the cause. The petition of Ada F. McDonnell for letters of special administration was not filed until after the order of removal, and is therefore no part of the transcript. We again respectfully request that you furnish us with a copy of the record as it existed of August 13th, 1897, when the cause was removed to the United States court, and we offer, as heretofore, to pay the fees for such transcript.

Yours very truly and respectfully, D. D. SHELBY.
R. W. WALKER.

Order Granting Writ of Certiorari.

Circuit Court of the United States, Northern District of Alabama, Northern Division.

ADA F. McDONNELL, Contestant,
vs.
LLEWELLYN JORDAN, Contestee.

This cause having been removed to this court by order of the court on August 12th, 1897, and the said contestee having filed a petition herein to obtain an order herein directing the judge of probate of Madison county, Alabama, to certify a transcript in said cause to this court, the said petition and exhibits thereto being duly considered by the court, it is now ordered, adjudged, and decreed that the writ of certiorari issue to the Hon. S. M. Stewart, judge of the probate court of Madison county, Alabama, directing and commanding him to certify to this court a full and complete record of all the pleadings and orders in the case of the contest of the will of Mattie Lee Fennell, which had been filed or made in said cause and entered in the records of said court on the 12th day of August, 1897, when the cause was removed to this court.

October 6th, 1897.

JOHN BRUCE, *Judge.*

Endorsed: Petition for writ of certiorari and order thereon. Filed in clerk's office October 6th, 1897. N. W. Trimble, clerk U. S. cir. court.

Writ of Certiorari.

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

ADA F. McDONNELL, Contestant,
vs.
LLEWELLYN JORDAN, Contestee. } No. 1652. Law.

The President of the United States of America to the honorable probate court of Madison county, Alabama, Greeting:

Whereas on the 6th day of October, 1897, the honorable circuit court of the United States for the northern division of the northern district of Alabama did make the following order, to wit:

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

ADA F. McDONNELL, Contestant,
vs.
LLEWELLYN JORDAN, Contestee.

This cause having been removed to this court by order of the court on August 12th, 1897, and the said contestee having filed a petition herein to obtain an order directing the judge of the probate court of Madison county, Alabama, to certify a transcript in said cause to this court, the said petition and exhibits thereto being duly considered by the court—

It is now ordered, adjudged, and decreed that the writ *if* certiorari issue to the Hon. S. M. Stewart, judge of the probate court of Madison county, Alabama, directing and commanding him to certify to this court a full, true, and complete record and transcript of all the pleadings and orders in the case of the contest of the will of Mattie Lee Fennell which had been made or filed in said cause and entered in the records of said court on the 13th day of August, 1897, when the cause was removed to this court.

JOHN BRUCE, *Judge.*

October 6th, 1897.

It is therefore hereby commanded that you certify and send
31 the records and proceedings aforesaid to the said circuit court of the United States, together with this writ, so that you may have the same at the United States court-rooms, in the city of Huntsville, in said division and district, on the 11th day of October, 1897, in the circuit court of the United States to be then and there held, that the said circuit court of the United States may cause to be further done thereupon what of right, according to the laws of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States of America, this the 7th day of October, in
[SEAL.] the year of our Lord one thousand eight hundred and ninety-seven.

N. W. TRIMBLE,
Clerk U. S. Circuit Court, etc.

Issued at Huntsville, Ala., October 7th, 1897.

Marshal's Return.

I hereby certify that the within writ was served personally on S. M. Stewart, judge of probate for Madison county, on the 7th day of October, 1897, at his office in the city of Huntsville, and that a true copy thereof was then and there delivered to and left with him.

D. N. COOPER,
U. S. Marshal,
By J. F. LANIER, *Deputy.*

Endorsed: Returned and filed in clerk's office Octo. 7th, 1897. N. W. Trimble, clerk.

Affidavit of Frank T. Pace.

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

Personally appeared before me, Ed. E. Greenleaf, U. S. comm'r, Frank T. Pace, clerk of the court of probate for the county of Madison, who is personally known to me, who, being duly sworn, deposes and says that he is the clerk of the court for the county of Madison, State of Alabama; that on the evening of August 3rd, 1897, David D. Shelby gave him the following memorandum of certain papers and proceedings in the matter of the will of Mattie Lee Fennell, of which he desired a transcript. The memoranda was as follows:

1st. The petition filed by Walter E. Jordan to probate the will of Mattie Lee Fennell.

32 2nd. The contest of said will filed by Ada F. McDonnell.

3rd. An amendment to the contest filed by Ada F. McDonnell.

4th. An amendment to the petition filed by Walter E. Jordan.

5th. (Paper to be filed.)

Affiant proceeded at once to make true copies of the papers called for, which were in the probate office. After finishing the transcript down to No. 5 affiant called on David D. Shelby for the "paper to be filed." This was on the 4th of August. Affiant was notified that the paper was not ready, but would be sent to the probate office in a short time. It was but — short time before the paper was handed me, which I marked "Filed August 4th" and signed probate judge's name to the filing. After affiant had marked the paper filed and made a copy of said paper he handed the same to Judge Stewart, and he directed affiant not to include the paper in the transcript asked for without including the order or ruling that he had made on the paper.

FRANK T. PACE.

Sworn to and subscribed before me this 2nd day of October, 1897.

[SEAL.] ED. E. GREENLEAF,
U. S. Commissioner.

Endorsed: Affidavit of F. T. Pace. Filed in clerk's office Octo. 6th, 1897. N. W. Trimble, clerk U. S. circuit court.

Affidavit of S. M. Stewart, Probate Judge.

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

Personally appeared before me, Ed. E. Greenleaf, United States commissioner, S. M. Stewart, judge of probate court for the county of Madison, State of Alabama, and who is personally known to me,

and who, being by me duly sworn, deposes and says that on the 3rd day of August, 1897, David D. Shelby left in the probate office the following memoranda of a transcript that he desired made in the Mattie Lee Fennell will case:

1st. Petition filed by Walter E. Jordan to probate the will of Mattie Lee Fennell.

2nd. The contest of said will filed by Ada F. McDonnell.

3d. An amendment to the contest filed by Ada F. McDonnell.

33 4th. An amendment to the petition filed by Walter E. Jordan.

5th. (Paper to be filed.)

The transcript was made out as requested and was ready for delivery on the 3rd day of August, not including "paper to be filed," and on August 4th, 1897, a paper endorsed "Answer of Llewellyn Jordan to the contest filed by Ada F. McDonnell" was handed to Mr. Frank Pace, the clerk of the court, and was by him marked filed. Affiant's attention was called to the paper after the same had been marked filed by the clerk, and he at once made the entry on it as is set forth in the transcript. Affiant further states that a transcript of the memoranda No. 1, 2, 3, and 4 was handed to D. D. Shelby on the 12th of August, 1897, and he refused to accept the same.

On August 14th, 1897, D. D. Shelby presented to affiant a copy of order of Hon. John Bruce, United States judge, ordering the removal of the matter of the contest of the will of Mattie Lee Fennell from the probate court of Madison county, Alabama, into the circuit court of the United States for the northern division of the northern district of Alabama. Without delay affiant caused to be prepared and delivered to the counsel of Llewellyn Jordan a full, true, and complete transcript of all the proceedings, orders, and decrees made by the probate court of Madison county, Alabama, in the matter of the petition to probate and the contest of the will of Mattie Lee Fennell. They declined to accept it. Affiant is ready and willing to deliver the transcript to this honorable court, and offers now to do so.

S. M. STEWART,
Judge of Probate.

Sworn to before me this 7th day of October, 1897.

[SEAL.] ED. E. GREENLEAF,
U. S. Commissioner.

Endorsed: Affidavit of S. M. Stewart, judge of probate. Filed in clerk's office Oct. 7th, 1897. N. W. Trimble, clerk U. S. circuit court.

34 *Answer of S. M. Stewart, Probate Judge, to Writ of Certiorari.*

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

ADA F. McDONNELL, Contestant,
vs.
LLEWELLYN JORDAN, Contestee.

The answer of S. M. Stewart, judge of the court of probate for the county of Madison, State of Alabama, to the allegations and statements contained in the petition of Llewellyn Jordan, asking and praying for an order from this honorable court on respondent to certify to this honorable court a full and complete transcript of the pleadings and decrees in the matter of the contest of the will of Mattie Lee Fennell, etc., answering, respectfully represents and shows to the court: The petition filed in the court on the 28th day of May, 1897, by W. E. Jordan, proponent, asking that Llewellyn Jordan be made a party defendant, was heard and discussed by counsel, pro and con, on 3rd of August, 1897, and an order was made by the court overruling the petition and motion to allow Llewellyn Jordan to become a defendant, and entered accordingly on that day. On the 3rd of Aug., David D. Shelby, one of the counsel for proponent in the matter of the contest of the will of Mattie Lee Fennell, presented to the clerk in the probate office the following memoranda of the papers he directed to be copied:

1. Petition filed by Walter E. Jordan to probate the will of Mattie Lee Fernell.
2. The contest of said will by Ada F. McDonnell.
3. The amendment to the contest filed by Ada F. McDonnell.
4. An amendment to the petition filed by Walter E. Jordan.
5. (Paper to be filed.)

A transcript of the papers included in the above memorandum on file in the probate court was made out and handed David D. Shelby, and he refused to accept the same. On the 4th of August, 1897, David D. Shelby presented in the probate court a paper-writing endorsed "Answer of Llewellyn Jordan to the contest filed by Ada F. McDonnell." This paper was marked filed by Frank T. Pace, clerk of the probate court, and dated August 4th, 1897. Respondent here refers to the affidavit of Frank T. Pace, now
35 on file in this honorable court, for a full statement of the facts connected therewith.

The attention of respondent was called to this paper by the clerk, and thereupon respondent, on the 4th day of August, 1897, made an order in writing striking said answer of Llewellyn Jordan to the contest of Ada F. McDonnell from the file. This order was made and entered on the day it purports, viz., the 4th day of August, 1897. On the 14th day of August, 1897, David D. Shelby exhibited to respondent an order made by Hon. John Bruce, judge of the United States district court, etc., ordering that the cause of the pro

ceeding to probate the will of Mattie Lee Fennell be removed from probate court to this honorable court. Respondent at once took steps to have a transcript made out, and on Sept. 3rd respondent, on the request of counsel for Mrs. Ada F. McDonnell, furnished them with a true and perfect transcript of all the orders, notices, and proceedings had in the probate court of Madison county, Alabama, concerning or relating to the matter of the petition and contest of the will of Mattie Lee Fennell, deceased.

Respondent is informed that said transcript was filed in this honorable court on 3rd September, 1897, and was on file in said court at the time that the certiorari was applied for.

On Sept. 4th respondent delivered to the attorneys for Llewellyn Jordan a transcript of all the orders, motions, proceedings, etc., had in the probate court of Madison county, Alabama, concerning or relating to the will of Mattie Lee Fennell.

On Sept. 6th respondent received from said attorneys a letter, a copy of which is made exhibit to the petition for certiorari.

On Sept. 7th respondent replied to said letter, a copy of which is hereto attached, marked Exhibit "A," and the same is asked to be made a part of this his answer. Respondent denies that he failed or refused to furnish the attorneys of Llewellyn Jordan with a transcript of the record as it stood on the 12th day of August, 1897, but, to the contrary, he asserts that he has delivered to said attorneys a full and complete transcript of all the orders, decrees, and proceedings as made and entered and the date of filing.

Respondent, in the discharge of his official duty, has pre-
36 sented to counsel for petitioner a transcript of the record of his court just as he made said record in the progress of said cause, and in compliance with the order of Hon. John Bruce, judge, of date Octo. 6th, 1897, directing that a writ of certiorari issue to respondent, as judge of the probate court of Madison county, Alabama, respondent here now files in this honorable court a full and complete record and transcript of all the pleadings and orders in the case of the contest of the will of Mattie Lee Fennell which has been filed or made in said cause and entered in the records of said court up to the 12th day of August, 1897, with his official certificate and seal of office attached thereto.

S. M. STEWART,
Probate Judge.

Sworn to and subscribed before me this 9th day of October, 1897.
[SEAL.] ED. E. GREENLEAF,
U. S. Commissioner.

EXHIBIT "A" TO ANSWER TO WRIT OF CERTIORARI.

HUNTSVILLE, ALA., *Sept. 7th*, 1897.

Messrs. D. D. Shelby and R. W. Walker.

GENTLEMEN: I was no little surprised when I found your letter of the 6th inst. returning to me the copy of the proceedings duly certified in the Fennell will case. I regret very much that this letter con-

tains suggestions which are entirely gratuitous, being unwarranted by the facts, and especially do I regret this because a petition for removal has been filed in the Federal court claiming that justice cannot be obtained in this court.

I recognize the fact that it is my sworn duty to present at any time called on a true and correct copy of all proceedings in this court. This I have done in the Fennell will case. The entry of April 15th, 1897, referred to by you was written and entered by me during the term of the court at which the case was tried and not as you so unjustly insinuate. The order of date August 4th, 1897, was made on the day it bears date, and the minute entry on this order was duly entered of record during regular run of business of that term at which the order was made.

37 It will give me pleasure to furnish you a true and correct copy of all proceedings, but I cannot insert papers which do not belong to the record, and omit entries which are a part of the record.

Now, gentlemen, this method of communicating with me regarding matter coming within the scope of my duties as judge I respectfully suggest is irregular, and I would prefer in future that you adopt the usual and proper method and which is not understood by any member of the bar of this court better than yourselves.

Yours most respectfully, S. M. STEWART,
Probate Judge.

38 *Transcript of Proceedings in Probate Court of Madison County, Alabama.*

THE STATE OF ALABAMA, }
Madison County. }

To the Honorable S. M. Stewart, judge of probate of said county:

The petitition of the undersigned, Walter E. Jordan, respectfully represents—

That Mattie Lee Fennell, who was at the time of her death an inhabitant of said county, died on or about the 5th day of February, 1897, leaving real and personal property in said county and State, having first made, on the 17th day of December, 1895, her last will and testament, she then being over 21 years old, duly signed and published by her, said Mattie Lee Fennell, and attested by Louis J. Searey and S. S. Pleasants. A copy of said will is made Exhibit "A" to this petition.

The original will is hereby surrendered to this court. Said testatrix was unmarried. She has no de-cendants; her mother and father both died before her death. Her sister, Ada F. McDonnell, a resident of said county and State, is her next of kin, and would have been her only heir had she died intestate.

Llewellyn Jordan, a resident and citizen of the State of Mississippi, temporarily residing at Washington, D. C., is named as devisee in said will. Said attesting witnesses reside at Huntsville, Alabama. Petitioner is named in said will as one of the executors thereof.

Said Llewellyn Jordan is named as executor. Also petitioner prays that a day may be set for the hearing of this petition, and that due notice thereof be given, as required by law, to the next of kin of said deceased, and that all necessary decrees, orders, and other proceedings may be had and made in the premises as may be necessary to effect the due probate of said will according to law.

W. E. JORDAN.

D. D. SHELBY,
Attorney for Petitioner.

Sworn to and subscribed by the said Walter E. Jordan before me this February 9th, 1897.

S. M. STEWART,
Judge of Probate.

39 Endorsed: Mattie Lee Fennell. Petition to probate will. Filed Feb'y 9th, 1897. S. M. Stewart, J. P. M. B. 21, p. 488, R. B.

Copy of Will.

I, Mattie Lee Fennell, being of sound mind, and knowing the uncertainty of this life do make this my last will and testament.

I. I give devise and bequeath all the property that I may own at my death, whether real, personal or mixed, to my mother, Mrs. M. E. Fennell, to have and to hold during her natural life, and at her death I give devise and bequeath the same to my cousin Llewellyn Jordan, of Washington, D. C., to have and to hold forever in fee-simple.

II. If my mother should die before my death, then I give devise and bequeath all of the property which I may own at my death whether real, personal or mixed to my said cousin, Llewellyn Jordan, in fee simple.

III. I hereby nominate and appoint said Llewellyn Jordan, and Walter E. Jordan executors of this my will, and direct that they be appointed to act as such without bond.

Signed, sealed and published as my last will this the 17th day of December, 1895.

(Signed) M. L. FENNEL. [SEAL.]

Signed, sealed, and published by the said Mattie Lee Fennell as her last will and testament in our presence, and we have signed the same as witnesses thereto in her presence, at her request, and in the presence of each other.

(Signed) LOUIS J. SEARCY.
S. S. PLEASANTS.

Endorsed: Copy of will, Miss Fennell. Filed in probate court Feb'y 8, 1897. S. M. Stewart, J. P. Exhibit "A" to petition of Walter E. Jordan.

40 *Notice of Day for Hearing Probate of Will.*

THE STATE OF ALABAMA, }
Madison County. }

To any sheriff of the State of Alabama.

To Mrs. Ada F. McDonnell:

You will please take notice that on the 11th day of February, 1897, a certain paper in writing, purporting to be the last will and testament of Mattie Lee Fennell, was filed in my office for probate by W. E. Jordan, and that the 24th day of February, 1897, was appointed a day for the hearing thereof; at which time you can appear and contest the same if you see proper.

Given under my hand this 11th day of February, 1897.

S. M. STEWART,
Judge of Probate.

Endorsed: State of Alabama, Madison county. Matter of application of W. E. Jordan to probate will of Mattie Lee Fennell, deceased. Notice to Ada F. McDonnell of day set for hearing. Issued 11th day of February, 1897. Executed by handing a copy of within writ to Mrs. Ada F. McDonnell Feb'y 11th, 1897. O. Fulgham, sh'ff.

Contest of Will.

In the Probate Court.

To the Hon. S. M. Stewart, judge of probate:

Comes Ada F. McDonnell, the wife of Dr. Henry McDonnell, a resident citizen of the county of Madison and State of Alabama, and represents and shows to your honor that she is the sister of Mattie Lee Fennell, deceased, who departed this life on the 5th of February, 1897; that the said Mattie Lee Fennell at the time of her death had no brother or sister except your petitioner.

She represents that she is the sole heir and distributee of the said Mattie Lee Fennell. She further represents that she has been informed and so believes that a certain instrument in writing, dated the 17th day of December, 1895, signed M. L. Fennell and witnessed by Louis J. Searcy and S. S. Pleasants, purporting to be the last true will and testament of the said Mattie Lee Fennell, has
41 been filed in this honorable court, praying an order of court to admit said paper-writing to probate as the last true will and testament of the said Mattie Lee Fennell.

She now here enters this her objection and contest of said writing, purporting to be the will of the said Mattie Lee Fennell, and for grounds of contest alleges and says:

1. Because the instrument purporting to be the will of the said Mattie Lee Fennell was not signed by the subscribing witnesses in the presence of the testatrix.

2. Because the said Mattie Lee Fennell did not sign her name to said paper-writing in the presence of the subscribing witness-.

3. Because the alleged will was not signed by the subscribing witnesses at the request of the testatrix, and the subscribing witnesses did not sign the same in the presence of each other and in the presence of the said Mattie Lee Fennell.

4. Because the said Mattie Lee Fennell, at the time the alleged will was signed and executed, was of unsound mind and memory and not mentally capable of making a will.

5. Because the execution of the will was procured by fraud and undue influence exercised by one Llewellyn Jordan, who is named as the sole devisee in said will, and others operating in his behalf and by his procurement.

The defendant, Ada F. McDonnell, demands a trial by jury.

WILLIAM RICHARDSON,
Attorney for Ada F. McDonnell.

Endorsed: Mattie Lee Fennell. Contest of will by Ada F. McDonnell. Jury demanded by defendant. Filed in probate court this 11th day of Feb'y, 1897. S. M. Stewart, J. P. M. B. 24, p. 490, R. B.

Amended Grounds for Contest.

In the Probate Court.

In the Matter of the Contest of the Will of MATTIE LEE FENNELL, Deceased.

Comes Ada F. McDonnell, contestant, and, by leave of the court first had and obtained, moves the court to allow her to amend the grounds of her contest, in this:

42 6. That said paper propounded is not the last will and testament of the said Mattie Lee Fennell. Said instrument is not her will.

WILLIAM RICHARDSON,
Attorney for Ada F. McDonnell.

Endorsed: Contest will, Mattie Lee Fennell. Amended grounds of contest. Filed March 22nd, 1897. S. M. Stewart, J. P.

Order Setting for Hearing.

Probate Court, Feb'y 24th, 1897.

Estate of MATTIE LEE FENNELL, Dec'd. Matter Probate Will Continued.

This day having been regularly appointed for hearing the application of W. E. Jordan, proponent, and also to consider in connection therewith the grounds of contest presented by next of kin, Mrs. Ada F. McDonnell—Wm. Richardson, Esq., for defendant, and D. D. Shelby and R. W. Walker, for the plaintiff—all being now in court, and the fact of attorney for Mrs. McDonnell having filed on the

23rd February in this court interrogatories to Columbus Few, Mary Ripley, and Henrietta Sims, all of whom reside in the city of Hendersonville, North Carolina, more than one hundred miles from the city of Huntsville, Alabama, all of whom are claimed to be material witnesses for the contestant in the matter of the contest of the probating of the will of the said Mattie Lee Fennell, deceased, and for reasons satisfactory to the court, the hearing of this matter is hereby continued to the 30th day of March, 1897, and the jury ordered to be drawn on the 20th day of March, 1897, from the box, as in the circuit court.

Proceedings at Drawing of Jury.

In Probate Court, March 20th, 1897.

Estate of MATTIE LEE FENNELL, Dec'd. Matter of Probate of Will Contest.

This being the day heretofore appointed, by order of this court entered February 24th, to draw in open court from the jury-box the names of fifteen persons from which to select jury to be empanelled for the purpose of determining whether or not to probate the will of Mattie Lee Fennell, propounded by W. E. Jordan and contested by Ada F. McDonnell—W. E. Jordan and Attor-
43 neys D. D. Shelby and R. W. Walker, for proponent, and Hon. Tancred Betts represents Wm. Richardson, for contestant—the court proceeded to draw from jury-box the following names:

J. B. Joplin, Gurley.
W. F. Lawler, Gurley.
J. S. Wilson, Whitesburgh.
Geo. Johnson (farmer), Monrovia.
L. H. Carter, Hazel Green.
Branch Fletcher (farmer), Madison.
A. J. Hannah (farmer), Gurley.
J. A. Beasley, Monrovia.
J. C. Nyman, Hurricane.
John Lawler, Maysville.
W. L. Fanning, New Market.
R. A. Givens, Gurley.
J. W. Atchley (farmer), Gurley.
S. H. Floyd, Madison.
B. T. Reagan, Maysville.

The above venire for special jury in matter of contest of will, Mattie Lee Fennell, dec'd, given to sheriff, with instructions to summon above named to appear before this court on 30th day of March, 1897, for purpose hereinbefore stated.

Hearing on Contest of Will.

In Probate Court, March 30th, 1897.

Estate of MATTIE LEE FENNELL, Dec'd. Contest of Will.

This being the day regularly appointed by order of this court, entered on February 24th, 1897, to hear matter of contest of will of Mattie Lee Fennell, deceased, and by order of same date the court proceeded, on 20th day of February, to draw from box 15 names as jurors, from which jury was to be empanelled to try issues in matter of contest of said will.

The challenges and other legal cause the jury being incomplete, court proceeded to draw from box names of eight persons from which jury list will be completed. The following names were drawn in open court:

L. H. Sanderson, farmer, Cluttsville.	Samuel Keel, farmer, Poplar Ridge.
W. T. Campbell, Gurley.	B. L. Coyle, Deposit.
James Meeks, Maysville.	J. C. Broyles, Maysville.
John T. Timmons, Whitesburgh.	C. B. Colburn, farmer, Vienna.

The above venire for special term given to sheriff with orders to serve at once and have persons in court tomorrow, April 1st, at 2 p. m., to which hour court adjourned.

41 In Probate Court, April 1st, 1897, 2 p. m.

The following persons were legally questioned, sworn, and empanelled a jury to try the issues made up in the matter of contest of will of Mattie Lee Fennell, deceased; W. E. Jordan, proponent, and Ada F. McDonnell, contestant; D. D. Shelby and R. W. Walker representing proponent and William Richardson for contestant:

Jury.

J. B. Joplin,	J. S. Wilson,	John B. Lawler,	George Johnson,
J. C. Nyman,	W. L. Fenning,	L. H. Carter,	R. A. Givens,
J. W. Atchley,	B. T. Reagan,	Wm. Campbell,	Samuel Keel.

Report of Jury.

In Probate Court, April 15th, 1897.

Estate of MATTIE LEE FENNELL, Dec'd. Matter of Contest of Will.

This day comes into court the jury heretofore empanelled on the 30th day of March, before whom the issues — made up and tried in the matter of the contest of the will of Mattie Lee Fennell, deceased (propounded by W. E. Jordan, proponent, and Ada F. McDonnell, contestant), and in open court state that they cannot agree upon a verdict, and that it is useless to detain them longer, the jury being eight in favor of proponent and four for contestant.

The jury is therefore now, by order of this court, discharged and cause continued for rehearing Monday, 6th day of June, 1897.

Continuance until July 6th, 1897.

In Probate Court, June 6th, 1897.

Estate of MATTIE LEE FENNELL, Deceased. Matter of Contest of Will.

This being the day heretofore by order of this court set for rehearing case in matter of contest of will of said deceased, now, for good reasons satisfactory to the court, said cause is continued to 6th day of July, 1897.

Amendment to Petition of Proponent.

In the Probate Court of Madison County, Alabama.

In the Matter of the Application to Probate the Will of
45 MATTIE LEE FENNELL, Deceased, by Walter E. Jordan, Proponent; Ada F. McDonnell, Contestant.

By leave of the court the proponent amends the petition by alleging the following:

"That the said Llewellyn Jordan is the sole legatee and devisee under said will, and is the person really interested in defending the validity of said will and in answering and defending the contest filed in said court to an-ul and make invalid said will."

The prayer of said petition is amended by adding the following:

"Petitioner prays that citation and all proper notice be given the said Llewellyn Jordan of this case and contest, and that he be made a party defendant to this petition.

W. E. JORDAN, *Proponent.*

Sworn to and subscribed before me this 28 day of May, 1897.

S. M. STEWART,
Judge of Probate.

Endorsed: Petition of probate of will of Mattie Lee Fennell, deceased. Proponent's amendment to petition to probate will. Filed May 28th, 1897. S. M. Stewart, judge of probate.

Order Denying Petition to Amend.

In Probate Court, August 3rd, 1897.

Matter of Petition to Amend. MATTIE LEE FENNELL, Deceased.

In the matter of the petition of W. E. Jordan to make Llewellyn Jordan party defendant to this case, and that citation and all proper notice be given said Llewellyn Jordan as such, heretofore filed with the papers in this case, May 28th, 1897, was set for hearing this August 3rd, 1897.

This day argued by Shelby and Walker for proponent and Richardson and Cooper for contestant. Motion overruled and amendment not allowed, and for reason good and satisfactory to this court the further hearing of this contest continued to Sept. 3rd, 1897.

46 *Answer of Llewellyn Jordan.*

STATE OF ALABAMA, }
Madison County. }

In Probate Court of said County.

In the matter of the contest of the probate of the will of Mattie Lee Fennell comes Llewellyn Jordan, named in the amendment to the petition in this cause filed by Walter E. Jordan, and intervenes

in said proceeding and files this his answer to the contest of Ada F. McDonnell.

Respondent for answer to the contest filed by said Ada F. McDonnell on the 11th day of February, 1897, says that the 1st, 2nd, 3rd, 4th, and 5th grounds are untrue and are denied, and for answer to the additional grounds filed March 2nd, 1897, says that the 6th grounds thereof are wholly untrue and are denied. (The seventh ground has been stricken out; is therefore not answered.)

Respondent avers that the said Mattie Lee Fennell was of sound mind and disposing memory, and that the averments in the said contest to the contrary are untrue and are denied, and that proof thereof is demanded and required.

The allegations of the said contestant that said will was obtained and procured by undue influence and fraud are denied and proof thereof required.

Respondent refers to said original will of Mattie Lee Fennell on file in said court and in said cause as a part hereof, and files herewith the affidavit of S. S. Pleasants, the surviving witness to said will.

Respondent alleges that the said Mattie Lee Fennell was at the time of her death an inhabitant of Madison county, over twenty-one years of age, and that she died on the 5th day of February, 1897, owning real and personal property in said county, having first made said last will on the 18th day of December, 1895. Ada F. McDonnell is her next of kin and only heir had she died intestate. Mattie Lee Fennell was unmarried. Said Ada F. McDonnell is a resident and citizen of Madison county.

April 4th, 1897.

LLEWELLYN JORDAN,
Devisee and Contestee.

17 *Proof of Will.*

THE STATE OF ALABAMA, }
Madison County. }

Probate Court, August 3rd, 1897.

In the Matter of the Probate of the Will of MATTIE LEE FENNELL, Deceased.

Before me, S. M. Stewart, judge of probate in and for said county, personally appeared in open court S. S. Pleasants, who lives in said county and who is known to me, who, having been by me first duly sworn and examined, did and do depose and say on oath that he is a subscribing witness to the instrument of writing now shown to him and which purports to be the last will and testament of Mattie Lee Fennell, deceased, late an inhabitant of this county, and that said Mattie Lee Fennell, since deceased, signed and executed said instrument on the date the same bears date, and declared the same to be her last will and testament, and that affiant set his signature thereto on the day the same bears date as a subscribing witness to

the same in the presence of said Mattie Lee Fennell and the other subscribing witness, Louis J. Searcy, and that such other witness subscribed his name as a witness in his presence and in the presence of the said Mattie Lee Fennell and in the presence of affiant. The said Mattie Lee Fennell was of sound mind and disposing memory, and in the opinion of the deponent fully capable of making her will at the time the same was so made, as aforesaid. Affiant further states that said Mattie Lee Fennell was on the day of the date of said will of the full age of twenty-one years *of age* and upwards, and at her death owned property in said county. Louis J. Searcy is dead.

S. S. PLEASANTS.

Sworn to and subscribed to before me this 4th day of August, 1897.

S. M. STEWART,
Judge of Probate.

Endorsed: Proof of will. Filed August 4th, 1897. S. M. Stewart, judge of probate.

48 *Order to Strike Intervention of Llewellyn Jordan from Files.*

Estate of MATTIE LEE FENNELL, Deceased.

July Term, 1897.

In this cause a paper, purporting to be an intervention on behalf of Llewellyn Jordan, having been endorsed "filed" by the clerk of this court, without the knowledge of the court, and said paper being so endorsed filed without an order authorizing said Llewellyn Jordan to intervene herein, and the motion made by Walter E. Jordan, the proponent, praying that said Llewellyn Jordan be made a party defendant hereto, on the 3rd day of August, 1897, being overruled and disallowed, it is therefore ordered that said paper purporting to be an intervention of said Llewellyn Jordan be stricken from the files in this cause.

Petition of W. E. Jordan Renouncing Right as Executor.

STATE OF ALABAMA, }
Madison County. }

In the Probate Court.

In the Matter of the Estate of MATTIE LEE FENNELL.

To the judge of said court:

The undersigned, Walter E. Jordan, named in the will of Mattie Lee Fennell as one of her executors, renounces his right to have letters testamentary issued to him. He desires that the said will shall be probated, but that letters testamentary should issue alone to the co-executor named in said will, Llewellyn Jordan.

August 5th, 1897.

WALTER E. JORDAN.

Endorsed: Estate of Mattie Lee Fennell, deceased. Filed Aug. 11, 1897. S. M. Stewart, J. P.

Petition for Special Letters of Administration.

STATE OF ALABAMA, }
Madison County. }

To Hon. S. M. Stewart, judge of probate:

Your petitioner, Ada F. McDonnell, respectfully represents to your honor that her sister, Mattie Lee Fennell, departed this life on or about the 5th of February, 1897; that at the time of her death she was a resident citizen of the county of Madison, State of Alabama; that she died seized of personal property and real estate situate and being in the county of Madison; that she left a will, the validity of which is being contested in this court; that the
49 collection of rents on decedent's plantation and other matters pertaining to the interest of her estate require the appointment of a special administrator until letters testamentary or administration have been duly issued.

Petitioner represents and shows to your honor that she is the nearest of kin to Mattie Lee Fennell, deceased. She therefore prays that your honor will issue to her special letters of administration on the estate of the said Mattie Lee Fennell, deceased, as the law in such cases directs.

And she will ever pray.

ADA F. McDONNELL.

I, Henry McDonnell, consent that letters of special administration on the estate of Mattie Lee Fennell, deceased, be granted and issued to my wife, Ada F. McDonnell, the above-named petitioner.

HENRY McDONNELL.

The judge of this court having heard that a petition had been filed in the circuit court of the United States for the northern division of the northern district of Alabama for the removal of this cause, no order will be made upon the above petition.

Endorsed: Matter of estate Mattie Lee Fennell, dec'd. Petition for letters special administration. Filed Aug. 17th, 1897. S. M. Stewart, probate judge.

Certificate of Authentication.

I, S. M. Stewart, judge of the court of probate in and for said county and State, do hereby certify that the above and foregoing — pages contain a full and complete record and transcript of all the pleadings and orders in the case of the contest of the will of Mattie Lee Fennell which had been *or* filed in said cause or entered up to and on the 12th day of August, 1897.

[SEAL.] Given under my hand and seal of office this 9th day of October, 1897.

S. M. STEWART,
Judge of Probate.

Endorsed: Transcript from probate court, Madison county, in answer to certiorari. Filed in clerk's office Oct. 9th, 1897. N. W. Trimble, clerk.

50 *Motion to Remand.*

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

In the Matter of the Contest of the Will of MATTIE LEE FENNELL, Deceased.

Comes Ada F. McDonnell, contestant in the matter of the contest of the will of Mattie Lee Fennell, deceased, and for answer to the petition filed in this honorable court by Llewellyn Jordan asking for the removal of a certain cause originating and pending in the probate court of Madison county, Alabama, in the matter of the probate of the will of Mattie Lee Fennell, deceased, wherein Walter E. Jordan was plaintiff and Ada F. McDonnell was contestant, says:

Respondent denies that the said Llewellyn Jordan is properly and legally a defendant in any cause or proceeding in this honorable court or in the probate court of Madison county, Alabama, in the matter of the contest of the will of Mattie Lee Fennell, deceased.

Respondent denies the allegations of said petition that, from prejudice and local influence, the said Llewellyn Jordan will not be able to obtain justice in the probate court of Madison county, Alabama, or in any other State court to which the cause could be removed; but respondent here asserts that there is no prejudice and local influence in the county of Madison that would prevent the said Llewellyn Jordan from obtaining a fair and impartial trial. Respondent denies that there was any controversy or suit pending in the probate court of Madison county, Alabama, touching or concerning the contest of the will of Mattie Lee Fennell, deceased, at the time the petition for removal was filed, wherein Llewellyn Jordan was defendant. Respondent denies that the will of Mattie Lee Fennell had been duly probated under the laws of Alabama by the affidavit of S. S. Pleasants.

Respondent denies that the will of Mattie Lee Fennell was filed or probated on the probate court of Madison county, Alabama, in common form, because the statutes of Alabama authorizes no such procedure in the matter of probate of wills.

51 Respondent denies that the proceeding in the matter of the probate of the will of Mattie Lee Fennell, deceased, in the probate court of Madison county, Alabama, is a suit *inter partes.*

Respondent denies that the affidavit and petition for removal are sufficient, and respondent asks leave of court to contest the truth of said affidavit and petition in such manner as this honorable court may direct.

Respondent files herewith a full, complete, and perfect transcript of all the orders and proceedings had in the probate court of Madison county, Alabama, touching or relating to the matter of contest

of the will of Mattie Lee Fennell, deceased, which is duly and legally certified by Hon. S. M. Stewart, the judge of said court of probate, under his official seal, which is made a part of respondent's answer, and respondent now moves this honorable court to remand said cause to the probate court of Madison county, Alabama, and for cause and grounds of said motion says:

1. The probate court of Madison county, Alabama, is a court of record, and has general, original, and exclusive jurisdiction of the probate of a will.

2. Because the probate court of Madison county, prior to the filing of the petition for removal, had assumed jurisdiction of the matter of the petition to probate and the contest of the will of Mattie Lee Fennell, dec'd, and was proceeding at the time the petition was filed to hear and determine the same.

3. Because the circuit court of the United States, northern district of Alabama, northern division, has no jurisdiction under the "removal acts of Congress 1887–1888," in the matter of a proceeding to probate a will.

4. The proceeding sought to be removed from the probate court of Madison county, Alabama, is a matter of probate jurisdiction and enquiry, and is not a "suit of a civil nature at law or in equity" within the meaning of the provision of the acts of Congress 1887–'88, and cannot be removed to this honorable court.

5. Because at the time of the filing of the petition for removal in this cause there was no controversy in the probate court of Madison county, Alabama, between a citizen of the State of Alabama and a citizen of another State, which is necessary to give this court jurisdiction.

52 6. Because the petitioner, Llewellyn Jordan, at the time of the signing of the petition for removal and making the affidavit was not a defendant in any suit, proceeding, or controversy in the probate court of Madison county, Alabama, relating to the matter of the probate of the will of Mattie Lee Fennell, deceased, and this court had no jurisdiction of this cause by virtue of said petition and affidavit when the same was filed in this court.

7. Because the petition and affidavit were insufficient, in that they did not set forth the facts and reasons showing the alleged prejudice or local influence.

8. Because the proceeding or action in the probate court of Madison county, Alabama, to establish the will of Mattie Lee Fennell, deceased, is not a seperate but a single controversy, and its removal is not authorized by the acts of Congress of 1887–'88.

9. Because the application for removal of the cause was not made in time or before the trial of the cause in the State court.

10. Because said application for removal was made too late.

11. Said cause was improperly removed, and the order for said removal was without authority of law.

WILLIAM RICHARDSON,
LAWRENCE COOPER,
Att'ys for Ada F. McDonnell.

Endorsed: Motion to remand. Filed in clerk's office Oct. 14th, 1897. N. W. Trimble, clerk U. S. circuit court.

Affidavits of Sundry Persons.

Affidavit of J. Q. Jamar.

STATE OF ALABAMA, }
Madison County. }

Personally appeared before me, J. W. Pickens, N. P. and *ex off.* J. P. for said county and State, J. Q. Jamar, who, being by me duly sworn, deposes and says that he is a deputy sheriff of Madison county, Ala.; that he summoned a number of the jurors who tried the contest of the will of Mattie Lee Fennell in the probate court of Madison county; that he did not in the performance of his
53 official duty nor as an individual nor has he at any time by words, acts, or otherwise attempted to create with any one any prejudice or local influence against Llewellyn Jordan; that he has never at any time expressed his opinion about the case. Affiant says he was frequently in attendance on the trial of the Fennell will case in the probate court; that large crowds, both men and women, were present at the trial. The preference and bias of large numbers who were present at the trial was openly expressed in the presence of the court and the jury in favor of Llewellyn Jordan. The judge from the bench notified the audience when such expressions were made that they would have to cease, or otherwise people offending in such way would have to be removed from the court-room. Since the close of the trial affiant in his capacity of deputy sheriff has had occasion to go among the people a great deal and learn what public sentiment is. He knows there is no prejudice or local influence existing among the people of Madison county against Llewellyn Jordan or in favor of Mrs. Ada F. McDonnell that would prevent Llewellyn Jordan from obtaining justice and a fair trial in the probate court of Madison county, Alabama.

J. Q. JAMAR.

Sworn to and subscribed before me this 13th day of October, 1897.

J. W. PICKENS,
N. P. and ex Off. J. P.

Affidavit of Charles P. Lane.

STATE OF ALABAMA, }
Madison County. }

Personally appeared before me, Henrietta A. Matthews, a notary public in and for said county and State, C. P. Lane, who, being by me duly sworn, deposes and says that he is now and has been for several years past editor of the Huntsville Evening Tribune; that he frequently attended the trial of the contest of the will of Mattie Lee Fennell in the probate court of Madison county, Alabama, while the same was in progress; that the partiality, preference, and

sympathy of a large number who attended the trial and of the public was strongly in favor of Llewellyn Jordan. Unusua demonstrations of sympathy and bias for Llewellyn Jordan were frequently made by persons attending the trial by applause
54 in the presence of the court and jury. Affiant states that in the pursuit of his business he has an opportunity of finding out public sentiment. No prejudice or local influence exists among the people of Madison county, Alabama, against Llewellyn Jordan or in favor of Ada F. McDonnell that could or would prevent Llewellyn Jordan from obtaining justice and a fair trial in the probate court of Madison county, Alabama.

CHARLES P. LANE.

Sworn to and subscribed before me this 11th day of October, 1897.

HENRIETTA A. MATTHEWS,
Notary Public.

Affidavit of Robert L. O'Neal.

STATE OF ALABAMA, }
Madison County. }

Personally appeared before me, Henrietta A. Mathews, notary public in and for said county and State, Robert L. O'Neal, proprietor and manager of the Daily Mercury, who, by me being duly sworn, deposes and says:

That the following is a true and correct copy of a card published by S. M. Stewart, judge of probate court of Madison county, Alabama, in the Daily Mercury, Huntsville, Alabama, Sunday, April 11th, 1897:

"Must keep quiet—The ladies reminded that their comments are out of place.—While I do not want to be harsh, I feel it my official duty to say that unless the ladies in attendance at the trial now pending in the probate court reserve their comments and criticisms and preserve order in court, I much prefer that they read the evidence in the daily papers.

S. M. STEWART,
Judge of Probate."

Upon this card the following editorial comments were made in the Mercury of the same date as follows:

"In a card, which appears in another column, Judge Stewart serves notice upon the ladies that perfect order must be maintained in the court-room hereafter. That Judge Stewart is justifiable in this course goes without saying. There can be no excuse for the comments spoken within the hearing of the court and jury. Good taste forbids the outspoken comments which are daily heard in the court-room, and for the sake of the ladies in attendance
55 we trust that a further complaint will be unnecessary."

R. L. O'NEAL,
Pres't and Mgr. Mercury.

Sworn to and subscribed before me this 11th day of Oct., 1897.

HENRIETTA A. MATTHEWS,
Notary Public.

Affidavit of Henry McDonnell.

STATE OF ALABAMA, }
Madison County. }

Personally appeared before me, Henrietta A. Matthews, notary public in and for said county and State, Henry McDonnell, who, by me being duly sworn, deposes and says that he is the husband of Ada F. McDonnell, the complainant in the matter of the will of Mattie Lee Fennell, deceased; he is a practicing physician in said county; that the only near relative he has residing in Madison county, Alabama, is his brother, Archie McDonnell, who is a farmer and lives on his plantation five miles southwest of Huntsville. Affiant states that he has no neices, nephews, or cousins residing in Madison county, Alabama; that the wife of R. E. Pettus is a second cousin of his, who resides in Madison county; that she is the only blood relative except his brother Archie that he has in this county. Affiant nor his brother have at any time exerted any influence to create a prejudice against Llewellyn Jordan. No relative of affiants have attempted to create such prejudice. Affiant further states that no prejudice or local influence exists in Madison county against Llewellyn Jordan and in favor of his wife that would prevent Llewellyn Jordan from getting justice and a fair trial in the probate court of Madison county, Alabama.

HENRY McDONNELL.

Sworn to and subscribed before me this 11th day of October, 1897.

HENRIETTA A. MATTHEWS,
Notary Public.

Affidavit of J. M. Massingale.

STATE OF ALABAMA, }
Madison County. }

Personally appeared before me, Henrietta A. Mathews, a notary public in and for said county and State, J. M. Massengale, who, being by me duly sworn, deposes and says that he is deputy sheriff
56 of Madison county; that he summoned a number of the jurors who tried the contest of the will of Mattie Lee Fennell in the probate court of Madison county, Alabama; that he did not then, by words or acts or otherwise, attempt to create with any one any prejudice or local influence against Llewellyn Jordan; that he has not at any time sought to create such prejudice or local influence; that he was frequently in attendance on the trial of the Fennell will case in the probate court; that a great many people attended said trial—both men and women; that he states that three-fourths of

the people in attendance were strongly biased and prejudiced in favor of Llewellyn Jordan; that the preferences and partialities of those attending the trial were expressed by applause and otherwise. Affiant states that he had occasion as deputy sheriff to mingle freely with the people of Madison county; he knows that no prejudice or local influence exists among the people of Madison county against Llewellyn Jordan or in favor of Mrs. Ada F. McDonnell that would prevent Llewellyn Jordan from obtaining justice and a fair trial in the probate court of Madison county, Alabama. Affiant was placed in charge of the jury when they retired to consider of their verdict, and he never expressed an opinion to any one about the case.

J. M. MASSINGALE.

Sworn to and subscribed before me this the 9th day of October, 1897.

HENRIETTA A. MATHEWS,
Notary Public.

Affidavit of Daniel Coleman.

STATE OF ALABAMA, }
Madison County. }

Personally appeared before me, N. P. and *ex off.* J. P. for said county and State, Daniel Coleman, who, being by me first duly sworn, deposes and says that he was present frequently during the session of the probate court of Madison county, Alabama, when the trial of the contest of the will of Mattie Lee Fennell, deceased, was in process. The sympathies and partialities of the public were strongly expressed in behalf of Llewellyn Jordan, the person to whom Miss Fennell left her property. During the trial a large number of people demonstrated their partiality and preferences for Llewellyn Jordan by applause and otherwise in the presence of the court and
57 jury. Affiant states that no prejudice or local influence exists among the people of Madison county against Llewellyn Jordan or in favor of Mrs. Ada F. McDonnell that would prevent Llewellyn Jordan from obtaining justice in the probate court of Madison county.

DANIEL COLEMAN.

Sworn to and subscribed before me this 9th day of October, 1897.

J. W. PICKENS,
N. P. and ex Off. J. P.

Affidavit of J. P. Powell.

STATE OF ALABAMA, }
Madison County. }

Personally appeared before me, J. W. Pickens, N. P. and *ex off.* J. P. in and for said county and State, J. P. Powell, who, being by me duly sworn, deposes and says that he was present frequently during the session of the probate court of Madison county, Alabama, when the trial of the contest of the will of Mattie Lee Fennell, de-

ceased, was in progress; that the sympathies and partiality of the public were strongly expressed in behalf of Llewellyn Jordan, the person to whom Miss Fennell left her property. During the trial a large number of people demonstrated their partiality and preferences for Llewellyn Jordan by applause and otherwise in the presence of the court and jury. Affiant states that no prejudice or local influence exists among the people of Madison county against Llewellyn Jordan or in favor of Ada F. McDonnell that would prevent Llewellyn Jordan from obtaining justice in the probate court of Madison county.

J. P. POWELL.

Sworn to and subscribed before me this 9th day of October, 1897.

J. W. PICKENS,
N. P. and ex Off. J. P.

Affidavit of A. S. Fletcher.

STATE OF ALABAMA, }
Madison County. }

Personally appeared before me, Henrietta A. Mathews, notary public in and for said county and State, A. S. Fletcher, who, being by me duly sworn, deposes and says thet he was present frequently during the session of the probate court of Madison county,
58 Alabama, when the trial of the contest of the will of Mattie Lee Fennell was in progress; that the sympathies and partiality of the public were strongly expressed in behalf of Llewellyn Jordan, the person to whom Miss Fennell left her property. During the trial a large number of persons demonstrated their partiality and preferences for Llewellyn Jordan by applause and otherwise in the presence of the court and jury. Affiant states that no prejudice or local influence exists among the people of Madison county against Llewellyn Jordan or in favor of Mrs. Ada F. McDonnell that would prevent Llewellyn Jordan from obtaining justice in the probate court of Madison county, Alabama.

A. S. FLETCHER.

Sworn to and subscribed before me this the 8th day of October, 1897.

HENRIETTA A. MATHEWS,
Notary Public.

Affidavit of Luke Matthews.

STATE OF ALABAMA, }
Madison County. }

Personally appeared before me, Henrietta A. Matthews, a notary public in and for said county and State, Luke Matthews, who, being by me duly sworn, deposes and says that he was present frequently during the session of the probate court of Madison county, Alabama, when the trial of the contest of the will of Mattie Lee Fennell, de-

ceased, was in procress; that the sympathies and partialities of the public were strongly expressed in behalf of Llewellyn Jordan, the person to whom Miss Fennell left her property. During the trial a large number of people demonstrated their partiality and preference for Llewellyn Jordan by applause and otherwise in the presence of the court and jury. Affiant states that no preference or local influence exists among the people of Madison county against Llewellyn Jordan or in favor of Mrs. Ada F. McDonnell that would prevent Llewellyn Jordan from obtaining justice in the probate court of Madison county.

LUKE MATTHEWS.

Sworn to and subscribed before me this 8th day of October, 1897.
HENRIETTA A. MATTHEWS,
Notary Public.

59 *Affidavit of W. W. Garth.*

STATE OF ALABAMA, }
Madison County. }

Personally appeared before me, Henrietta A. Matthews, a notary public in and for said State and county, W. F. Garth, who, being by me duly sworn, deposes and says that he was present during the session of the probate court of Madison county, Alabama, when the trial of the contest of the will of Mattie Lee Fennell was in progress; that the sympathies and partiality of the public were strongly expressed in behalf of Llewellyn Jordan, the person to whom Miss Fennell left her property. During the trial a large number of people demonstrated their partiality and preferences for Llewellyn Jordan by applause and otherwise in the presence of the court and jury. Affiant states that no prejudice or local influence exists among the people of Madison county against Llewellyn Jordan or in favor of Mrs. Ada F. McDonnell that would prevent Llewellyn Jordan from obtaining justice in the probate court of Madison county, Alabama.

W. F. GARTH.

Sworn to and subscribed before me this 8th day of October, 1897.
HENRIETTA A. MATTHEWS,
Notary Public.

Endorsed: Affidavits. Filed in clerk's office October 14th, 1897. N. W. Trimble, clerk U. S. courts.

Hearing on Motion to Strike from Files and to Remand.

ADA F. McDONNELL, Contestant,
vs.
LLEWELLYN JORDAN, Contestee. } No. 1652. Law.

This cause now coming on to be heard upon the motion to strike from the files and upon the motion to remand, the said motions were argued by counsel. During the argument the usual hour of

adjournment having arrived, the further hearing of this cause was continued until tomorrow morning at ten o'clock.

Tuesday, October 12th, 1897.

NOTE.—The hearing on the motions to strike from the files and to remand was duly resumed and duly continued from day to day until Thursday, the 14th day of October, on which date the argument was closed, and the court announced that decision would be reserved until a later day of the term.

60 In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

ADA F. McDONNELL, Contestant,
vs.
LLEWELLYN JORDAN, Contestee. } No. 1652. Law. Decree on Petition to Remand.

This cause coming on to be heard on the motion to "strike this cause from the files," and also on the "motion to remand the said cause to the State court," on the grounds stated in said motions, and the said motions being heard together by agreement of counsel, and being argued in court orally by counsel, and being duly considered by the court, it is now—

Ordered, adjudged, and decreed by the court that the said "motion to strike from the files" and the said "motion to remand" are both overruled and disallowed, and this court retains jurisdiction of the said cause.

October 18th, 1897.

JOHN BRUCE, *Judge.*

Filed in open court October 19th, 1897.

N. W. TRIMBLE, *Clerk.*

61 *Certificate to Supreme Court.*

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

ADA F. McDONNELL, Contestant,
vs.
LLEWELLYN JORDAN, Contestee. } No. 1652. Law.

In this cause Ada F. McDonnell, named as contestant herein having prayed for and this day obtained a writ of error from the judgment of this court, rendered on the 19th day of October, 1897, returnable to the present term of the Supreme Court of the United States, under the provisions of sec. 5 of the act of Congress approved March 3rd, 1891, entitled "An act to establish circuit courts of appeals, and to define and regulate in certain causes the jurisdiction of the courts of the United States, and for other purposes," this court now certifies to the Supreme Court the following questions of jurisdiction:

1. Whether this court has jurisdiction to hear and determine the

matters of controversy shown in the record between said Llewellyn Jordan and Ada F. McDonnell.

2. Whether this court has jurisdiction to hear and determine a cause removed to this court from the State court wherein it is sought to establish and probate the will of Mattie Lee Fennell, deceased, late a resident citizen of the State of Alabama, Madison county.

3. Whether this court has jurisdiction to remove the proceeding shown in the record from the State probate court upon the petition of the said Llewellyn Jordan.

4. Whether this court acquired jurisdiction of the matters in controversy between said Llewellyn Jordan and Ada F. McDonnell upon the petition of the said Llewellyn Jordan to remove the said proceedings from the State probate court to this court.

5. Whether the said Llewellyn Jordan by his proceeding of intervention in the State probate court became a party to said cause, entitling him to remove said cause from the State probate court to this court.

6. Whether the said Llewellyn Jordan by his proceedings of intervention became a party defendant to said cause, enabling
62 him to remove from said court to this court the said proceedings therein commenced by W. E. Jordan, as one of the executors of the instrument purporting to be the last will and testament of Mattie Lee Fennell, deceased, as shown by the record.

October 28th, 1897.

JOHN BRUCE, *Judge.*

Endorsed: Filed October 30th, 1897.

Mandate from Supreme Court of the United States.

UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the honorable the judges of the circuit court of the United States for the northern district of Alabama, Greeting:

Whereas lately, in the circuit court of the United States for the northern district of Alabama, before you or some of you, in a cause between Ada F. McDonnell, contestant, and Llewellyn Jordan, contestee, wherein the judgment of the said circuit court, entered in the said cause on the 18th day of October, 1897, was in favor of the said contestee, Llewellyn Jordan, and against said contestane, as by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of a crit of error, agreeably to the act of Congress in such case made and provided, fully and at large appears;

And whereas, in the present term of October, in the year of our Lord one thousand eight hundred and ninety-seven, the said cause came on to be heard before the said Supreme Court on the said transcript of record and on a motion to dismiss, which was argued by counsel:

On consideration whereof it is now here ordered and adjudged by

this court that the writ of error in this cause be, and the same is hereby, dismissed for the want of jurisdiction.

JANUARY 10TH, 1898.

You, therefore, are hereby commanded that such proceedings be had in said cause as according to right and justice and the laws of the United States ought to be had, the said writ of error notwithstanding.

63 Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the tenth day of February, in the year of our Lord one thousand eight hundred and ninety-eight.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Endorsed: Filed February 14th, 1898. N. W. Trimble, clerk U. S. court.

64 *Motion to Strike from Files.*

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

In re Estate of MATTIE LEE FENNELL, Deceased.

Comes Ada F. McDonnell, by her attorneys, and not wa-ving any right hereafter to make and enter a motion to remand, and whose appearance is expressly limited to the purpose of this motion and who is the contestant in a certain proceeding instituted in the probate court of Madison county, Alabama, to probate a certain instrument in writing dated Sept. 17th, 1895, and purporting to be the last will and testament of Mattie Lee Fennell, deceased, and moves this court to dismiss and strike from the file in this cause the petition of Llewellyn Jordan for the reasons particularly set forth in the motion to dismiss and strike from the files said petition in this cause; which said motion was filed in this court on the 3rd day of September, 1897.

WILLIAM RICHARDSON,
LAWRENCE COOPER,
Attorneys for Ada F. McDonnell.

Endorsed: Filed in open court October 31st, 1898. N. W. Trimble, clerk U. S. circuit court.

Motion to Remand.

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

In re Estate of MATTIE LEE FENNELL, Deceased.

Comes Ada F. McDonnell, by her attorneys, and moves the court to remand this cause to the State court of probate for the county of Madison, State of Alabama, for the reasons and matters set forth

particularly in the motion to remand filed herein by the said Ada F. McDonnell on the 14th day of October, 1897.

WILLIAM RICHARDSON,
LAWRENCE COOPER,
Attorneys for Ada F. McDonnell.

Endorsed: Filed in open court October 31st, 1898. N. W. Trimble, clerk U. S. circuit court.

65 *Motion to Strike "Motion to Strike from Files the Petition of Llewellyn Jordan" and "Motion to Remand" from Files.*

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

ADA F. MCDONNELL, Contestant,
vs.
LLEWELLYN JORDAN, Contestee. } No. 1652. Law.

The above-named contestant, Llewellyn Jordan, moves the court to strike from the file in this cause the motions of the contestant filed October 31st, 1898, to remand the cause, and to strike from the file the petition of contestee, on the grounds:

1st. That the matter of said motion has been disposed of by the ruling of the court at a former term in this cause.

2nd. That a writ of error to the Supreme Court of the United States to review said ruling of this court in this cause has been sued out by said contestant, and said writ of error has been disposed of by said Supreme Court.

3rd. Because said motion has been unreasonably delayed, and the trial of the cause should not now be obstructed by its consideration.

D. D. SHELBY,
R. W. WALKER,
Attorneys for Contestee.

Endorsed: Filed in open court October 31st, 1898. N. W. Trimble, clerk U. S. circuit court.

Order Sustaining Motion of Contestee.

ADA F. MCDONNELL, Contestant,
vs.
LLEWELLYN JORDAN, Contestee. } No. 1652. Law.

This cause coming on to be heard, comes the contestant, by counsel, and files two motions—one, to strike the petition of the contestee from the files, and the other to remand the cause. Thereupon the contestee, by counsel, comes and files his motion to strike the two motions of the contestant from the files. The court heard the counsel briefly on the motions, and, upon consideration, held that, the matter having been determined at a previous term of the court,

— decided not to pass upon it again. Thereupon the court
66 sustained the motion of the contestee to strike the said two motions of the contestant from the files; to which decision of the court the contestant in open court duly excepted.

In open court, October 31st, 1898.

Motion of Contestant for Continuance Denied.

ADA F. McDONNELL, Contestant,
vs.
LLEWELLYN JORDAN, Contestee. } No. 1652. Law.

Comes the contestant, by counsel, and moves the court for a continuance of this cause, alleging the absence of an important witness. The said motion, being resisted by counsel for contestee, upon consideration by the court, was overruled and denied.

Organization of Jury.

ADA F. McDONNELL, Contestant,
vs.
LLEWELLYN JORDAN, Contestee. } No. 1652. Law.

This cause now coming on to be heard, come the parties, by attorneys, and, on the motion of the counsel for contestant, it is ordered that a "struck" jury be empanelled for the trial of this cause; and thereupon the following-named persons were duly selected, empanelled, tried, sworn as such "struck" jury, to wit:

Ed. Christiansen,	Thomas Pippin,	Madison Nichols,	Thomas J. Counts,
J. J. Bishop,	W. C. Bracken,	B. F. Gibson,	G. W. Ellett,
J. W. Rigsby,	W. L. Cox (c.),	A. J. Brown,	A. J. Sherill,

and the hearing of this cause was commenced.

While waiting the coming of witnesses, the hour of daily adjournment having arrived, the jury were cautioned by the court, and the further hearing of this cause was continued until tomorrow morning at ten o'clock.

Motion to Strike Intervention of Llewellyn Jordan from Files.

ADA F. McDONNELL, Contestant,
vs.
LLEWELLYN JORDAN, Contestee. } No. 1652. Law.

Comes the contestant, by counsel, and moves the court that the paper purporting to be an intervening petition on behalf of Llewellyn Jordan be struck from the files in this cause for the following reasons:

1. Because said paper was not filed in the probate court of Madison county, Alabama.

67 2. Because there is no law authorizing intervening petitions in the contest of a will.

3. Because said transcript filed in this cause showed that said intervention was not filed in said court of probate.

The said motion, being duly considered by the court, was overruled and denied; to which ruling the contestant duly excepted.

In open court, November 1st, 1898.

NOTE.—The hearing of this cause was regularly and duly adjourned from day to day until November 8th, 1898, on which day the verdict of the jury was returned.

Verdict of the Jury.

ADA F. McDONNELL, Contestant,
vs.
LLEWELLYN JORDAN, Contestee. } No. 1642. Law.

This being the day and the hour to which the further hearing of this cause was on yesterday continued, now come again the parties to this cause in person, and also by their counsel. Comes also again the jury heretofore duly empanelled, tried, and sworn herein, and the hearing of this cause is resumed, and at the close of the testimony in the cause the court charged the jury, directing a verdict in favor of Llewellyn Jordan, contestee. Thereupon the jury return their verdict in writing, signed by their foreman, and on their oath do say:

"We, the jury, find the issues in favor of the contestee, Llewellyn Jordan.

ED. CHRISTIANSEN, *Foreman.*"

It is therefore considered by the court that the contest of Ada F. McDonnell of the last will and testament of Mattie Lee Fennell, deceased, and the several grounds of said contest be, and the same are hereby, overruled and denied.

It is further considered and adjudged by the court that the contestee, Llewellyn Jordan, have and recover of the contestant, Ada F. McDonnell, the costs in this behalf expended, for which, if not otherwise paid, an execution may issue.

In open court, November 8th, 1898.

68 *Certificate to the Supreme Court.*

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

ADA F. McDONNELL, Contestant,
vs.
LLEWELLYN JORDAN, Contestee. } No. 1652. Law.

In this cause Ada F. McDonnell, named as contestant herein, having prayed for and obtained a writ of error from the final judgment of this court in this cause, rendered on the 8th day of November, 1898, returnable to the present term of the Supreme Court of the United States under the provisions of section five of the act of

Congress approved March 3rd, 1891, entitled "An act to establish circuit courts of appeal, and to define and regulate in certain causes the jurisdiction of the courts of the United States, and for other purposes," this court now certifies to the Supreme Court the following questions of jurisdiction:

1. Whether this court has jurisdiction to hear and determine the matters of controversy shown in the record between said Llewellyn Jordan and Ada F. McDonnell.

2. Whether this court has jurisdiction to hear and determine the cause removed to this court from the State court, wherein it is sought to establish and probate the will of Mattie Lee Fennell, deceased, late a resident citizen of the county of Madison, State of Alabama.

3. Whether this court has jurisdiction to remove the proceeding shown in the record from the State probate court upon the petition of the said Llewellyn Jordan.

4. Whether this court acquired jurisdiction of the matters in controversy between the said Llewellyn Jordan and Ada F. McDonnell upon the petition of the said Llewellyn Jordan to remove the said proceedings from the State probate court to this court.

5. Whether this court has jurisdiction to entertain the petition of the said Llewellyn Jordan for the removal of said proceeding to this court after the mistrial of said cause in the State probate court, as shown by the record filed herein.

69 6. Whether this court has jurisdiction to entertain the petition of said Llewellyn Jordan to remove said cause from the State probate court to this court after a jury had been empanelled in the State probate court, the trial entered upon, the failure of the jury to agree, and a mistrial of said cause entered in said probate court.

7. Whether this court has jurisdiction of the petition of said Llewellyn Jordan to remove said cause from said probate court to this court after filing in said probate court an answer to the contest of said will.

Done in open court this 8th day of November, 1898.

JOHN BRUCE, *Judge.*

The foregoing paper was actually signed by me on the 15th day of March, 1899, at Birmingham, Alabama.

JOHN BRUCE, *Judge.*

April 4, 1899.

Filed November 8th, 1898.

N. W. TRIMBLE, *Clerk.*

Petition for Writ of Error.

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

ADA F. McDONNELL, Contestant,
vs.
LLEWELLYN JORDAN, Contestee. } No. 1652. Law.

And now comes Ada F. McDonnell, the defendant, named as contestant herein, and says:

That on the 8th day of November, 1898, this court entered final judgment herein in favor of Llewellyn Jordan, the contestee, and against this defendant, named as contestant, in which judgment and the proceedings had thereto in this cause certain errors were committed to the prejudice of this defendant, named herein as contestant, which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore this defendant, named in said proceedings as contestant, prays that a writ of error may issue in this behalf to the Supreme Court of the United States for the correction of errors so complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

March 15th, 1889.

WILLIAM RICHARDSON,
LAWRENCE COOPER,
Attorneys for Ada F. McDonnell, Defendant and Contestant.

Filed in clerk's office March 15th, 1889.

N. W. TRIMBLE, *Clerk.*

70 *Assignment of Errors.*

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

ADA F. McDONNELL, Contestant,
vs.
LLEWELLYN JORDAN, Contestee. } No. 1652. Law.

The defendant, Ada F. McDonnell, named in the proceedings as contestant, in connection with her petition for a writ of error makes the following assignments of error, which she avers occurred upon the trial of the cause, to wit:

1. The court erred in refusing to grant the motion of said Ada F. McDonnell to strike from the files the petition of said Llewellyn Jordan for the removal of the contest from the probate court of the county of Madison, State of Alabama, of the instrument offered for probate as the last will and testament of Mattie Lee Fennell, deceased.

2. The court erred in refusing to strike from the files the petition of said Llewellyn Jordan for the removal of said contest of said in-

strument offered as the last will and testament of Mattie Lee Fennell, deceased, for probate in the court of probate for the county of Madison, State of Alabama, because it appears from said petition that this court is without jurisdiction to hear and determine the matter in controversy.

3. The court erred in refusing to strike from the files the petition of said Llewellyn Jordan for the removal of the contest of said instrument offered as the last will and testament of Mattie Lee Fennell, deceased, from the probate court of the county of Madison, State of Alabama, because it affirmatively appears from the record that the proceeding in said court of probate is a proceeding to establish and probate the will of said Mattie Lee Fennell, deceased.

4. The court erred in refusing to strike from the files the petition of said Llewellyn Jordan, because it appears from said record that he is not a party to said proceeding, and that this court is without jurisdiction to hear said petition and determine his alleged right to intervene therein.

5. The court erred in denying the motion to strike the
71 petition of said Llewellyn Jordan from the files, because it affirmatively appears from the authenticated record and proceedings of said court of probate filed in this court that there was not and is not any cause pending in said court of probate between said "Ada F. McDonnell, contestant, *v.* Llewellyn Jordan, contestee."

6. The court erred in denying the motion of Ada F. McDonnell to remand this cause to the State probate court.

7. The court erred in refusing to remand said cause to the State probate court.

8. The court erred in denying the motion of Ada F. McDonnell to remand this cause to the probate court of the county of Madison, State of Alabama, because this court is without jurisdiction in the premises.

9. The court erred in denying the motion of said Ada F. McDonnell to remand this cause to the probate court of the county of Madison, State of Alabama, because the said proceeding in said court of probate is a proceeding to establish the will of Mattie Lee Fennell, deceased.

10. The court erred in denying the motion of said Ada F. McDonnell to remand this cause to the probate court of the county of Madison, State of Alabama, because the said proceeding in said probate court is a proceeding to probate and establish the will of said Mattie Lee Fennell, deceased, the said court of probate having exclusive jurisdiction in the premises.

11. This court erred in denying the motion of said Ada F. McDonnell to remand this cause to the probate court of the county of Madison, State of Alabama, because the proceeding in the said court of probate is a proceeding to probate and establish the will of said Mattie Lee Fennell, over which this court has no jurisdiction.

12. The court erred in denying the motion of Ada F. McDonnell to remand this cause to the court of probate for the county of Madison, State of Alabama, because the proceeding in the said court of

probate is a proceeding to probate and establish the will of
72 Mattie Lee Fennell, while this court, in refusing to so remand this cause, takes jurisdiction in the premises, when, by law, this court and the courts of the United States have no jurisdiction in the premises.

13. The court erred in denying the motion of Ada F. McDonnell to remand this cause to the probate court of the county of Madison, State of Alabama, because it appears from the record of the proceedings therein that this court is without jurisdiction in the premises in this, that the said Llewellyn Jordan, by his intervention in said proceedings, makes himself a party defendant, when by the laws of Alabama the said Ada F. McDonnell is a defendant, and that by said petition for removal a separable controversy is not presented to this court.

14. The court erred in denying the motion of said Ada F. McDonnell to remand said cause to the probate court of the county of Madison, State of Alabama, because this court has no jurisdiction in the premises in this, that said proceeding is a proceeding to establish and probate the will of Mattie Lee Fennell, deceased, and a proceeding to establish and probate a will does not present a separable controversy between the parties.

15. The court erred in denying the motion of said Ada F. McDonnell to remand said cause to the probate court of the county of Madison, State of Alabama, because a proceeding to establish a will is not a suit of a civil nature at common law or in equity removable from the State court to the circuit court of the United States.

16. The court erred in denying the motion of Ada F. McDonnell to remand said cause to the probate court of the county of Madison, State of Alabama, because this court is without jurisdiction in the premises in this, that the petition for removal was not filed in this court within the time prescribed by law.

17. The court erred in denying the motion of Ada F. McDonnell to remand said cause to the probate court of the county of Madison, State of Alabama, because this court is without jurisdiction in the premises in this, that the petition for removal was not filed before or at the term at which the cause could have been first tried and before the trial thereof.

73 18. The court erred in its judgment of October 17th, 1897, denying the motion of the said Ada F. McDonnell to strike this cause from the files and overruling the motion to remand said cause to the State probate court.

19. The court erred in its judgment of October 31st, 1898, denying the motion of the said Ada F. McDonnell to remand said cause to the State court.

20. The court erred in its judgment of October 31st, 1898, sustaining the motion of the said Llewellyn Jordan to strike from the files the motion so made by the said Ada F. McDonnell to strike the petition of the said Llewellyn Jordan from the files and the motion of said Ada F. McDonnell to remand said cause to the State probate court.

21. The court erred in its judgment of November 1st, 1898, refus-

ing to strike the intervening petition of Llewellyn Jordan from the files in this cause.

22. The court erred in its final judgment, rendered in this cause on the 8th day of November, 1898.

23. The court erred in its final judgment, rendered in this cause on the 8th day of November, 1898, overruling and denying the matters of contest of said Ada F. McDonnell to the last will and testament of Mattie Lee Fennell, deceased, because said court was without power and jurisdiction to hear and determine the contest of the said last will and testament.

24. The court erred in denying the motion of Ada F. McDonnell to remand said cause to the probate court of the county of Madison, State of Alabama, because the court was without jurisdiction in the premises in this, that it affirmatively appears in the record that a trial of said cause had taken place in the said probate court of Madison county, Alabama; that the jury failed to agree, a mistrial was entered and cause continued before the petition for removal from the State to the Federal court was filed.

25. The court erred in denying the motion of Ada F. McDonnell to remand said cause to the probate court of Madison county, State of Alabama, because the court was without jurisdiction in the premises in this, that Llewellyn Jordan was not a defendant in the cause when the same commenced in the probate court and was not
74 a defendant in the cause at the time of the filing of the petition and order for removal.

26. The court erred in denying the motion of Ada F. McDonnell to remand said cause to the probate court of the county of Madison, State of Alabama, because the court was without jurisdiction in this, that Llewellyn Jordan had submitted to the jurisdiction of the State court by filing an answer to the contest of Ada F. McDonnell before his petition for removal was filed.

WILLIAM RICHARDSON,
LAWRENCE COOPER,
Attorneys for Ada F. McDonnell, Contestant.

Filed March 15th, 1899.

N. W. TRIMBLE, *Clerk.*

Order Granting Writ of Error.

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

ADA F. MCDONNELL, Contestant,
vs.
LLEWELLYN JORDAN, Contestee. } No. 1652. Law.

This 15th day of March, 1899, comes the defendant named in the proceedings herein as contestant, by her attorneys, and filed herein and presented to the court her petition praying for the allowance of a writ of error intended to be urged by them, praying also that a transcript of the records and proceedings and papers upon which

the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof the court does allow the writ of error upon the defendant named in the caption as contestant giving bond, according to law, in the sum of five hundred dollars.

JOHN BRUCE, *Judge.*

Filed March 15th, 1899.

N. W. TRIMBLE, *Clerk.*

75 The Supreme Court of the United States.

THE UNITED STATES OF AMERICA:

The President of the United States to the honorable judge of the circuit court of the United States for the northern division of the northern district of Alabama, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, between Ada F. McDonnell, contestant, and Llewellyn Jordan, contestee, a manifest error has happened, to the great damage of the said Ada F. McDonnell, contestant, as by her complaint appears, we, being willing that error, if any hath been made, should be duly corrected and all full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ to the present term of said court, within thirty days from the signing of this citation, to wit, the 10th day of April, 1899, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error whatever of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 15th day of March, 1899, in the 123 year of the Independence of the United States of America.

[Seal U. S. Circuit Court, N. D. of Alabama.]

N. W. TRIMBLE,
Clerk U. S. Circuit Court, Nor. Dist. Ala.

I, N. W. Trimble, clerk of the circuit court of the United States for the northern division of the northern district of Alabama, do hereby certify that the foregoing writ of error has been served upon the defendant in error, Llewellyn Jordan, by lodging a copy thereof for said defendant in error in the office of the clerk of this court.

March 16th, 1899.

[Seal U. S. Circuit Court, N. D. of Alabama.]

N. W. TRIMBLE,
Clerk U. S. Circuit Court.

[Endorsed:] Ada F. McDonnell *v.* Llewellyn Jordan. Writ of error. Filed March 15, 1899. N. W. Trimble, clerk.

76 *Appeal Bond.*

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

ADA F. McDONNELL, Contestant,
vs.
LLEWELLYN JORDAN, Contestee. } No. 1652. Law.

Know all men by these presents that we, Ada F. McDonnell, as principal, and Henry McDonnell and A. McDonnell, as sureties, are held and firmly bound unto Llewellyn Jordan in the full and just sum of five hundred dollars ($500.00), to be paid to the said Llewellyn Jordan, his certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 15th day of March, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas lately, at a circuit court of the United States for the northern division of the northern district of Alabama, in a suit pending in said court between Ada F. McDonnell, defendant, named herein as contestant, and Llewellyn Jordan, named herein as contestee, a final judgment was rendered against said Ada F. McDonnell, and the said Ada F. McDonnell having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court, to reverse the judgment of the aforesaid suit, and a citation directed to the said Llewellyn Jordan, citing and admonishing him to appear at the present session of the Supreme Court of the United States within thirty days from the signing of the petition in said cause:

Now, the condition of the above obligation is such that if the said Ada F. McDonnell shall prosecute said writ of error to effect and answer all damages and costs if she fail to make the plea good, then the above obligation to be void; else to remain in full force and virtue.

ADA F. McDONNELL. [SEAL.]
HENRY McDONNELL. [SEAL.]
A. McDONNELL. [SEAL.]

Signed and delivered in the presence of—

——— ———.

Approved:
JOHN BRUCE, *Judge.*

Filed March 15th, 1899.

77 UNITED STATES OF AMERICA:

The President of the United States to Llewellyn Jordan, Greeting:

You are hereby cited and admonished to be and appear at the present term of the Supreme Court of the United States, to be holden at the city of Washington, on Monday, the 10th day of April, 1899, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern division of the northern district of Alabama, wherein Ada F. McDonnell is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this the 15th day of March, in the year of our Lord one thousand eight hundred and ninety-nine.

JOHN BRUCE, *Judge.*

77½ [Endorsed:] Ada F. McDonnell *v.* Llewellyn Jordan. Citation. Filed March 15, 1899. N. W. Trimble, clerk.

Marshal's Return of Service.

On this 18th day of March, 1899, before me, Ed. E. Greenleaf, United States commissioner in and for the northern district of Alabama, personally appeared O. B. Harris, deputy United States marshal, and makes oath that he delivered a true copy of the within citation to R. W. Walker, Esq., attorney of record for Llewellyn Jordan, defendant in error herein.

O. B. HARRIS,
Deputy U. S. Marshal.

Sworn to and subscribed in my presence this 18th day of March, 1899.

[Seal of Ed. E. Greenleaf, U. S. Commissioner, Northern Dist. Alabama.]

ED. E. GREENLEAF,
U. S. Commissioner.

78 *Order for Final Adjournment of Court.*

It is ordered that the circuit and district courts of the United States for the northern district and northern division be, and the same are hereby, adjourned *sine die.*

JOHN BRUCE, *Judge.*

March 16th, 1899.

79 *Clerk's Certificate.*

UNITED STATES OF AMERICA,
Northern District of Alabama, Northern Division.

I, N. W. Trimble, clerk of the circuit court of the United States for the northern division of the northern district of Alabama, do hereby certify that the foregoing manuscript pages numbered from

one to seventy-seven, inclusive, contain a full, true, complete, and perfect transcript and copy of record and proceedings heretofore had and entered of record in said court in a certain cause lately pending in said court wherein Ada F. McDonnell was contestant and Llewellyn Jordan was contestee, as fully and completely as the same is of record and on file in my office.

In testimony to the above I hereunto sign my name and affix the seal of said circuit court, at Huntsville, Alabama, the place of holding said court, this the 20th day of March, A. D. 1899.

Seal U. S. Circuit Court, N. D. of Alabama.

N. W. TRIMBLE,

Clerk U. S. Circuit Court, Nor. Div., Nor. Dist. Alabama.

Endorsed on cover: File No., 17,355. N. Alabama C. C. U. S. Term No., 253. Ada F. McDonnell, plaintiff in error, *vs.* Llewellyn Jordan. Filed April 6th, 1899.